

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN THE MATTER OF)

SHAPES/ARCH HOLDINGS, LLC,
ET AL.,)

Debtor.)

Case No.: 08-14631 (GMB)

Camden, New Jersey

April 17, 2008

U.S. BANKRUPTCY COURT
FILED
CAMDEN, NJ
08 APR 22 PM 12:20
BY: JAMES J. WALDRON
DEPUTY CLERK

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE GLORIA M. BURNS,
UNITED STATES BANKRUPTCY JUDGE

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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

I N D E X

ARGUMENT:

By: Mr. Felger	8, 12, 39
By: Mr. Halperin	26
By: Mr. Sirota	42
By: Mr. Brody	47
By: Mr. D'Auria	52
By: Mr. Shapiro	53

THE COURT:

Ruling	12, 56, 93
--------	------------

Colloquy

5

1 CLERK: -- the Honorable Gloria M. Burns presiding.

2 THE COURT: Please be seated. Good morning.

3 MR. FELGER: Good morning, Your Honor.

4 THE COURT: Good morning, Mr. Felger.

5 MR. FELGER: Mark Felger of Cozen O'Connor on behalf
6 of the debtors.

7 THE COURT: All right. If you just want to hold on
8 for one minute before I get everybody's appearance. There's --
9 I have somebody on the phone. (Pause). Mr. Drew?

10 MR. DREW: Yes.

11 THE COURT: This is Judge Burns, and you're on in the
12 courtroom in the matter of Shapes/Arch Holdings. I would
13 appreciate it if you would put your appearance on the record.
14 And, then, if, during the course of the proceedings, you have
15 any difficulty in hearing, if you would just shout out. I'll
16 try to get somebody to move closer to the microphone.

17 MR. DREW: Okay. Thank you, Your Honor. James Drew
18 from Curtis Mallet on behalf of Glen Core (phonetic) Limited.
19 Also on the line I believe is Alyssa Golab (phonetic) from Glen
20 Core.

21 THE COURT: Good morning. Other appearances, please?

22 MR. HALPERIN: Good morning, Your Honor. Alan
23 Halperin, Halperin, Battaglia, Raicht, on behalf of the
24 Committee.

25 MR. SIROTA: Judge, good morning. Michael Sirota,

Colloquy

6

1 Cole Schotz, co-counsel for the Committee.

2 MR. BRODY: Good morning, Your Honor. Alan Brody and
3 Diane Vuocolo from Greenberg Traurig on behalf of Arch
4 Acquisition I, LLC.

5 MR. SHAPIRO: Good morning, Your Honor. Joel
6 Shapiro, Blank Rome, on behalf of Arcus ASI Funding, LLC.

7 MR. MORTON: John Morton for Wells Fargo Equipment
8 Finance and Jaguar Credit.

9 MR. KLEIN: Oren Klein of Parker McCay on behalf of
10 Pennsauken Township.

11 MR. D'AURIA: Good morning, Your Honor. Peter
12 D'Auria from the United States Trustee's Office.

13 THE COURT: Good morning everyone. Other
14 appearances?

15 MR. GIANSANTE: Good morning, Your Honor. Louis
16 Giansante on behalf of Ward Sand and Materials Company.

17 THE COURT: Could you just slow down a little bit so
18 I can get your appearance again?

19 MR. GIANSANTE: It's Louis Giansante on behalf of
20 Ward Sand and Materials Company.

21 THE COURT: Thank you.

22 MR. POLLACK: Good morning, Your Honor. Robyn
23 Pollack, Saul Ewing, on behalf of SL Industries.

24 MS. SHUFF: Good morning, Your Honor. Deborah Shuff,
25 Drinker, Biddle & Reath, on behalf of Sears Holding Management

Colloquy

7

1 Corporation, Georgia-Pacific, The Glidden Company, Avery
2 Dennison, Borden Foods, Crowley Corporation, Garrett Buchanan,
3 and SEPTA.

4 THE COURT: Good morning.

5 MS. COLLINS: Good morning, Your Honor. Kathleen
6 Collins on behalf of Quickway, Inc. from Litchfield Cavo.

7 MR. GAREMORE: Good morning, Your Honor. Joseph
8 Garemore from the Brown & Connery firm on behalf of the
9 Pollution Control Financing Authority of Camden County.

10 THE COURT: Good morning.

11 MR. D'AURIA: Your Honor, may I make a disclosure,
12 please?

13 THE COURT: Yes.

14 MR. D'AURIA: I would like to inform the Court that
15 Mr. Garemore is from the Brown & Connery firm. A partner of
16 that firm named Paul Mainardi is my second cousin. For
17 whatever that's worth, I made the disclosure.

18 THE COURT: Okay. Thank you, --

19 MR. D'AURIA: Thank you.

20 THE COURT: -- Mr. D'Auria. I'm not really -- unless
21 somebody has an objection right now, I'm not that concerned.
22 But, I appreciate your bringing it to the Court's attention.

23 MR. D'AURIA: Thank you, Your Honor.

24 THE COURT: Mr. Felger?

25 MR. FELGER: The debtors have no concern about that,

Felger - Argument

8

1 Your Honor. Good morning again, Your Honor. It seems
2 appropriate just to take matters up in the order that they're
3 presented on the amended agenda.

4 THE COURT: Okay.

5 MR. FELGER: The first item is the -- an amended
6 motion by the debtors to employ and compensate certain
7 professionals in the ordinary course of business. It's a
8 rather routine motion. And, we had to amend it because there
9 were certain items that needed to be clarified from the motion
10 that was initially filed. It was our intention to -- to
11 include this as a first day motion. But, unfortunately we just
12 weren't able to -- to pull it together and identify all the
13 folks we needed or we thought we ought to identify in the
14 motion.

15 We've served this out on all parties. No objections
16 have been filed. We've spoken with counsel for the Committee,
17 and I believe they have no objection to the entry of the order
18 approving that motion. I believe we filed a certificate of no
19 objection yesterday. And, I'm not sure whether Your Honor has
20 had a chance to enter that order or -- if not, if Your Honor
21 has any questions with respect to that motion, we're happy to
22 address them this morning.

23 THE COURT: Well, to be truthful, with everything
24 else I've been looking at, I didn't spend a lot of time because
25 I know it's uncontested. They seem to be -- oh, did you have a

Felger - Argument

9

1 ques -- did you have an objection, Mr. D'Auria?

2 MR. D'AURIA: No, not an objection, Your Honor. I
3 just wanted to inform the Court that the -- the order attached
4 to the amended motion is different from the order to the first
5 motion. And, some of the changes were in response to concerns
6 our office raised.

7 THE COURT: Okay. Well, make sure that, --

8 MR. D'AURIA: So, --

9 THE COURT: Chris, when you pull it out, that it's
10 the amended order.

11 MR. D'AURIA: And, that amended order solves our
12 concerns.

13 THE COURT: And, what were those concerns that you --
14 that have now been addressed?

15 MR. D'AURIA: They were done by my colleague, Your
16 Honor. But, I believe it -- it involved the ability to look
17 back at fees paid at the end of the day under 330.

18 THE COURT: Is that your understanding?

19 MR. FELGER: It was likewise done by a colleague of
20 mine. So, -- that sounds right though, Your Honor.

21 MR. D'AURIA: That was a crux of it, Your Honor.
22 There may have been another change in the middle of the
23 document, but that was the crux of it.

24 THE COURT: Unfortunately, I don't have another
25 colleague that will look at things for me, so I have to look at

Felger - Argument

10

1 them myself. And, if there's any question, we'll reach out to
2 you, Mr. Felger. I just really kind of scanned what you were
3 looking at. I didn't know that the U.S. Trustee had concerns.
4 I'm glad they were addressed. But, perhaps, when I look at the
5 two orders, I'll be able to understand what the -- what the
6 differences were.

7 MR. D'AURIA: If I remember correctly, Your Honor,
8 the last paragraph of the order on the amended motion --

9 THE COURT: Uh-huh.

10 MR. D'AURIA: -- was an addition that didn't appear
11 in the first one.

12 THE COURT: All right. Thank you, Mr. D'Auria. I'll
13 look at it when I finish today. And, if there's any question,
14 Mr. Felger, I'll have somebody reach out to you.

15 MR. FELGER: That sounds right, Your Honor. I'm
16 looking at the final order now -- I mean, the final paragraph
17 of the order now. And, it provides that the final statement is
18 served upon notice parties, and they shall have 20 days to file
19 an objection. So, that seems to address the concern that the
20 U.S. Trustee just raised.

21 The second matter on our amended agenda, Your Honor,
22 is a -- a motion for authority to continue certain customer
23 practices and programs. Again, this is another motion that we
24 had hoped to pull together and include as a first day motion
25 given the issues that are raised in that motion with respect to

1 the debtor's ability to continue to honor what are recognized
2 as standard customer programs and practices in the respective
3 industries of the debtors.

4 The facts are all pretty well set forth in the
5 motion, and the motion is verified. I have spoken with counsel
6 for the Committee who has indicated to me they have no
7 objection to the entry of an order granting that relief. And,
8 again, it's -- it's simply to authorize the debtors to continue
9 with its ordinary course customer practices and programs --

10 THE COURT: Involving warranty claims, and --

11 MR. FELGER: Exactly.

12 THE COURT: -- repairs, and those kind of things.

13 MR. FELGER: Replacement parts to retail -- to
14 distributors and customers. And, also honoring -- to the
15 extent they're pre-petition claims, I think what we've set out
16 is that we believe the total among the various programs for un
17 -- for pre-petition unsecured claims would be less than
18 \$110,000.

19 THE COURT: And, the Committee is not --

20 MR. HALPERIN: We have no objection, Your Honor.

21 THE COURT: No problem with that? Mr. D'Auria,
22 anything from the U.S. Trustee?

23 MR. D'AURIA: I reviewed it myself. No objection,
24 Your Honor. It's purely the continuation of a warranty
25 program. There's not a -- there's not a payment of a pre-

1 petition claim. I didn't view it to be akin to a critical
2 vendor motion.

3 THE COURT: Okay. All right. There's been no
4 objection. I'll look over the form of the order. And, if
5 there's not any problem with it, the order will be entered.

6 MR. FELGER: And, that brings us to the reason why I
7 think everybody is here today, and that's items 3 and 4. And,
8 I think it's -- given what -- where the debtors are and what
9 the debtor is requesting, it probably makes sense to take up
10 both matters together.

11 What the debtors are requesting, Your Honor, is an
12 adjournment of both of these matters for a short time. We've
13 talked with the parties about a date for the adjourned hearing,
14 and it's something we -- we need obviously to take up with Your
15 Honor. But, we were looking at something relatively short into
16 the latter part of next week or perhaps the following Monday.
17 And, it could very well be that the following Monday works best
18 for the folks --

19 THE COURT: The problem with the following Monday
20 is --

21 MR. FELGER: Okay.

22 THE COURT: -- that that is the first day of the
23 Third Circuit Conference, and I will not be here.

24 MR. FELGER: Uh-huh.

25 THE COURT: So, -- I won't be here. I'll only be

Felger - Argument

13

1 here -- the week after next I'm only going to be here one day.
2 And, I -- I don't know that this is what I can do in that one
3 day, to be honest, because I'm going to be in -- in Maryland
4 Monday through Wednesday, and I'm going to be at the bench bar
5 conference on Friday. I guess, if I had to, I could miss that.
6 But, I'm already scheduled to be at the Circuit Conference.
7 So, --

8 MR. FELGER: Well, it sounds like Mr. Sirota's
9 crystal ball was working yesterday, because he suspected that's
10 where you may be. So, I guess we'll have to talk -- after we
11 get through what everybody wants to say on the record -- an
12 appropriate date to reschedule these two matters. So, I guess
13 we can take that up at the end.

14 In light of the objections filed to the -- to the DIP
15 financing motion -- I think there were four or five -- and the
16 dozen or so objections that were filed to the disclosure
17 statement, we thought, in discussion with Versa and CIT, our
18 DIP lenders -- and Versa, our plan funder -- that it made sense
19 to adjourn both of those matters for a -- a short period of
20 time to hopefully address all of the objections and file an
21 amended plan and disclosure statement that, if not -- that
22 would, if not eliminate all objections, would certainly whittle
23 them down to a manageable few.

24 We've reached out to the Committee to indicate that
25 that was our intent to ask the Court for an adjournment. And,

Felger - Argument

14

1 it was -- it was our desire to not only adjourn, but to perhaps
2 have a chambers conference with Your Honor with respect to sort
3 of where we are and what some of the critical issues are.

4 The -- the Committee's response to our request for
5 the adjournment was that they'd be fine with an adjournment
6 provided certain things happened before the adjourned hearing.
7 And, what I'd like to do is walk -- walk through those items
8 that the Committee wanted to see happen before -- before we got
9 to an adjourned hearing.

10 At the time when we approached them, we hadn't yet
11 decided whether we were going to adjourn the disclosure
12 statement hearing. So, one of their points was that they would
13 want both the disclosure statement hearing and the DIP
14 financing motion adjourned to an acceptable date for all
15 parties. And, that one we had no problem with.

16 The next point on their list was they wanted the
17 ability to depose three individuals before the adjourned
18 hearing. From the debtor's side, the two individuals who
19 testified at the first day hearing, Steve Grabell the CEO, and
20 Vince Collistra, a principal of Phoenix. And, the third person
21 was a representative -- or is a representative of Versa, Arcus,
22 and that's Paul Halpern (phonetic).

23 The -- in talking with Mr. Shapiro, counsel for
24 Versa, Versa and the debtors are fine with producing those
25 three witnesses at a -- at a mutually convenient time before

1 the adjourned hearing. So, that one was acceptable to the
2 debtors and Versa.

3 The third point they -- they raised was that they
4 wanted a -- a full response to their 2004 subpoena that they
5 served, I guess, about ten days ago. Over the course of the
6 last ten days, we've been sharing a great deal of information,
7 notwithstanding their allegation that we've given them a
8 handful of documents. We've given them quite a bit of
9 information over the past ten days.

10 But, admittedly, we haven't fully responded to that
11 subpoena. So, what I have said to them is we will endeavor to
12 produce the documents that have been requested. I indicated
13 that some of the requests are extremely broad and that we need
14 to put our heads together to try to get to a meeting of the
15 minds as to exactly what the Committee is looking for with
16 respect to some of the items.

17 For instance, one of the items was give us everything
18 you have in support of every allegation in your DIP financing
19 motion. There's a hundred paragraphs in that motion. So, we
20 need to -- we need to talk and --

21 THE COURT: Try to sit down and -- and --

22 MR. FELGER: Yeah, I've spoken --

23 THE COURT: -- tone down the -- what the scope of
24 that area is.

25 MR. FELGER: We had a -- I spoke with Ilana Volkov,

1 Mr. Sirota's partner, last week. And, we went through them one
2 by one. And, there was an acknowledgment by Ms. Volkov that
3 there were a couple of them that she needed to get back to me
4 on to try to focus in on what -- what we're -- what they're
5 looking for.

6 So, we've -- we've agreed to -- to work diligently to
7 get them the additional information they'll need in response to
8 their subpoena, recognizing we're not waiving any privilege,
9 work product, that sort of thing. And, if we need to raise
10 those issues, we'll raise them, and Your Honor will decide.

11 So, I don't believe that one is going to be an issue.
12 Again, we're going to -- we're going to work with them and
13 endeavor to get them everything -- everything they need. And,
14 if we don't, I'm sure they'll be reaching out to Your Honor on
15 that one.

16 The fourth point was that they wanted to have us file
17 an amended plan and amended disclosure statement and any
18 response to their objections by this Friday. As Your Honor is
19 aware, Arcus has already filed their response to their -- to
20 their objections. And, unfortunately, standing here today, I
21 have not read their response. But, at least in that respect,
22 Arcus has already gone on record with their response.

23 We are fine with filing an amended plan and amended
24 disclosure statement and the debtor's response -- and there
25 will be a response -- to the objections reasonably in advance

1 of the adjourned hearing date. Friday would be fine if we were
2 looking a hearing next Tuesday or Wednesday. But, depending on
3 where -- where we come out, if it's a later hearing, we'd
4 probably want until Monday or Tuesday of next week. So, I
5 think it's all going to track off of what the adjourned hearing
6 date is in terms of filing our amended plan and disclosure
7 statement.

8 We had an amended plan and disclosure statement with
9 some pretty significant changes ready to go. But, in light of
10 all of the objections that have come in over the last couple of
11 days, including a very comprehensive objection by the Committee
12 just yesterday, additional changes to the plan and disclosure
13 statement will be made. And, --

14 THE COURT: To mean that we adjourn -- I want to --
15 I'm going to bring up a few things that I think you need to
16 address in your disclosure statement, some of which were
17 addressed and some of which weren't. And, we might as well at
18 least get into some of that now because, if I'm going to be
19 looking at an amended disclosure statement, we might as well
20 take into account as many of the things that are of concern to
21 the Court as possible.

22 MR. FELGER: Absolutely. The last item that the
23 Committee wanted to see happen -- and, it was -- and, it's an
24 item that the debtors did not agree to and Versa did not agree
25 to, and that's to provide HIG or Arch Acquisition I documents

Felger - Argument

18

1 that they have requested as due diligence for an alternative
2 DIP and their proposed alternative plan. And, -- so, I think
3 the reason we're here today is that issue.

4 They've asked us to produce those documents. Mr.
5 Halperin has asked me a half a dozen times to produce those
6 documents and has indicated that I may be breaching my
7 fiduciary duties if I'm not producing those documents. And, I
8 have Arcus saying the exact opposite.

9 I know I'm in a difficult spot when Mr. Shapiro is
10 telling me it's a no brainer, and Mr. Halperin is telling me
11 it's a no brainer. So, I'd like to give a little flavor on
12 where we are on that issue and then let Mr. Halperin or Mr.
13 Sirota and Shapiro give their views.

14 THE COURT: You could -- if you would start by
15 telling me the essence of what it is that they're looking for
16 that you -- and why you have a problem with supplying it.

17 MR. FELGER: Okay.

18 THE COURT: Assuming that -- I did read somewhere
19 that Arch at one time had signed a confidentiality agreement.
20 So, I'm assuming that any disclosure now would be subject to
21 the same dis -- same confidentiality agreements --

22 MR. FELGER: The --

23 THE COURT: -- or is that the question?

24 MR. FELGER: They did -- I guess I'll start with --
25 start -- I wasn't going to start there, but we'll start there.

1 HIG, Arch Acquisition I, has a portfolio company that is a --
2 or HIG has a portfolio company that is a competitor of the
3 debtor.

4 And, I -- I guess it was about a year to a year and a
5 half ago -- it was about a year and a half ago that debtors
6 went through a process and hired an investment banker and went
7 out to the market and talked with a lot of people about a
8 transaction. And, one of the folks they talked with was HIG.
9 And, HIG did due diligence, there were discussions, and no deal
10 was reached.

11 So, in answer to your question, I believe a
12 confidentiality agreement was signed. Personally I have not
13 seen it. I don't know if it's still in effect. It was with
14 the debtor and not the debtor-in-possession, so I think a new
15 -- on that basis alone, a new confidentiality would have to be
16 signed. But, there were discussions, there were negotiations.
17 The parties know each other. And, that didn't result in a
18 transaction.

19 Just to complete that thought, the debtor, before
20 filing, reached out again to HIG. And, HIG indicated they
21 weren't interested in that time in going forward with a
22 transaction. This was back in mid January. That was through
23 Mr. Grabell.

24 So, to sort of back track and -- and give Your Honor
25 sort of our view on the HIG document request, they've --

1 they've asked for -- and, admittedly, it's a -- it's a rather
2 limited list. I've seen due diligence lists that are entirely
3 too burdensome and certainly more burdensome than the request
4 made by HIG. But, what they've done is they've broken it into
5 two pieces. They've asked for documents relative to the
6 alternative DIP financing, and they've asked for documents
7 relative to the alternative plan.

8 The discussions we had yesterday went to providing
9 them with the documents relative to the DIP financing. And, --
10 and, I think where the Committee came out on the plan documents
11 was -- I think Mr. Sirota used the word place holder -- let's
12 deal with that after we provide the first wave of documents on
13 the DIP financing. So, those are the documents they're looking
14 for.

15 What we've done is we've -- you know, first and
16 foremost, Your Honor heard it at the first day, how we got to
17 where we were on March 16th. It was a very difficult, very
18 intensive two-month process where we had a lender group that
19 was squeezing us hard and indicating to us that they weren't
20 prepared to do any lengthy process because a lengthy process
21 would -- would involve almost tripling where the company was in
22 their over advance. And, they did not have an appetite to do
23 that.

24 The company had discussions with a lot of folks, and
25 they -- including they reached out to HIG at that point. And,

1 quite frankly, the only party that stepped up with expressing
2 an interest in doing something quickly, which is what the
3 debtor had -- had to accomplish, was Versa. They stepped up,
4 they had a battalion of people at the company's operations for
5 two weeks, invested thousands of hours -- of man hours of time,
6 and put a proposal on the table very quickly.

7 That proposal was enough to get our lenders to agree
8 to continue to talk with Versa, which they did, and we did.
9 And, we continued to work hard to get to a point where there
10 would be an acceptable arrangement among the debtors, the
11 lender group, and Versa.

12 And, -- so, where we found ourselves on the 16th was a
13 situation where we weren't pulling the plug and sending a
14 thousand people home. We were keeping a business alive. We
15 had -- we had DIP financing in place from our existing lender
16 group and Versa. We had exit facilities committed to from both
17 groups.

18 We had a plan committed to that provided for payment
19 of secured debt, payment of the freight of the case, payment of
20 all the priority claims, a small dividend to unsecured
21 creditors -- and, admittedly, I asked for more, and the
22 response was that's the Committee's job. So, there was a
23 recognition there would be a negotiation with the Committee to
24 make that a better deal for the unsecured creditors.

25 In addition, we were saving a thousand jobs, keeping

1 a business that's been in the community for 50 years alive, and
2 we're keeping a customer for the unsecured creditors. And, I
3 have to tell you, I represent a lot of committees. And, future
4 profits sometimes is more important than dividend. So, we were
5 -- we thought keeping a customer alive, saving a thousand jobs
6 is very important.

7 So, we agreed to go forward with that. We agreed to
8 support their debtor-in-possession financing. We agreed to
9 support their plan -- the debtors and the owners agreed to
10 support their deal. So, that's where we were on the 16th.

11 We now have HIG coming back into the fold. And, God
12 bless them, they've been very vigilant. Mr. Brody has been
13 very diligent, very responsive. And, they started with a DIP
14 financing agreement. They then added an asset purchase
15 agreement to that. The Committee expressed a lot of concerns
16 with the asset purchase agreement, as we had concerns with an
17 asset purchase agreement. And, they've changed it now to a
18 plan. So, they -- they're now out there with a -- an
19 alternative DIP financing arrangement and an alternative plan.

20 A couple of nights ago I reached out to Mr. Halperin,
21 and I raised a number of concerns in an e-mail. And, I think
22 they are valid concerns for any fiduciary in considering
23 providing these documents to HIG and perhaps switching horses
24 at this point. And, that's why I wanted a chambers conference,
25 because these are valid concerns, Your Honor should know about

1 these concerns, and I'm not entirely comfortable vetting them
2 at this point, because a couple of them go to information that
3 isn't public at this point.

4 I have my e-mail to Mr. Halperin, and I'm happy to
5 share it with Your Honor because it expresses the debtor's
6 concerns with respect to where the HIG folks are at this point.
7 If I could approach and hand it up?

8 THE COURT: All right. Well, why don't we just hold
9 for -- that for a minute, because we'll see where we're going
10 to go, whether we're going to have a chambers conference, what
11 we're going to do here, hear what everybody has to say, and
12 then we'll decide how we're going to go from there.

13 MR. FELGER: Okay. So, --

14 THE COURT: But, I -- but, I --

15 MR. FELGER: -- the backdrop --

16 THE COURT: -- recognize you're telling me you had
17 confidentiality concerns.

18 MR. FELGER: So, the backdrop is we worked hard, and
19 Versa worked very hard. And, they stepped up when no one else
20 stepped up. And, we agreed as part of that deal to support
21 them, and we're bound to support them through the papers. We
22 have issues with where HIG is at this point, not only on their
23 papers and the items expressed in my e-mail. They're a
24 strategic buyer, they are a competitor of ours, and it's always
25 dangerous giving confidential proprietary information in this

1 setting to a -- a competitor.

2 My third point on providing documents to HIG is
3 process. We don't have a process approved by Your Honor to
4 provide information to anyone. And, what does it mean when I
5 give documents to HIG? Does that then mean that, when another
6 competitor shows up tomorrow, we need to do the same thing?

7 So, process is an issue for us. And, procedurally,
8 you know, where are we? We don't have a motion to compel
9 documents from HIG. So, procedurally, before we -- I hate this
10 expression -- but, willy-nilly give somebody documents, we need
11 to know where that ends, where it begins. So, I wanted to give
12 Your Honor that backdrop before you hear from the Committee and
13 before you hear from Versa.

14 Again, I'm going to -- you know, I'm going to finish
15 where I started and say that the debtor is in a -- in a
16 difficult spot based upon what we're hearing from both sides,
17 and certainly we hope to get some guidance from Your Honor
18 today.

19 THE COURT: All right. With regard to the last one
20 thing you brought up, the procedural thing, I'm not as
21 concerned about that because of the very expedited situation
22 that we're in. I mean, you know, we'll address it. But, if it
23 can be taken care of in an expeditious manner, I'm not going to
24 have form over substance and worry about getting a motion in
25 when everybody, I think, agrees that this has to be quick --

1 done quickly.

2 And, that's one of the issues that I probably will
3 want to hear from you, once we hear everything else, as to
4 what's going on with the debtor between the -- we had our first
5 hearing today and going forward.

6 MR. FELGER: That's one of the issues I didn't want
7 to -- that on the record. But, --

8 THE COURT: Right. I'm saying that that -- that's a
9 concern that I -- you know, I see under -- I mean, we spent a
10 long time the first day. And, I recognize that the Committee
11 wasn't here, the U.S. Trustee brought up a few things. But,
12 neither of us really knew everything that was -- that had
13 happened over the last months and weeks, but got a sense of it
14 from the testimony that was given.

15 And, I did make the rulings that I did based on what
16 I said -- I mean, on -- basically on two reasons. One, that
17 this was basically the only game in town at the time and the
18 debtor would close that day if not for the financing. And,
19 that's -- that was the bottom line that led to the interim
20 order that was entered.

21 And, fully recognizing that the Committee was going
22 to come into the case and we were going to -- and, I expected
23 and -- I expect and I did expect that it would be a
24 negotiation, and we would hear from all of the other issues --
25 hear all the other issues, and we would go from there. And, I

Halperin - Argument

26

1 -- just to say that I did have a very short time to review Mr.
2 Shapiro's late filed response.

3 And, if I can summarize the essence of it, it was --
4 it kind of focused on, you know, the debtor's rights as having
5 exclusivity to file a plan and use its business judgment. And,
6 I'm very sensitive to that, and I think that is true. But, on
7 the other hand, this is not just an in the market business
8 transaction. You want the Court's approval. The Court has to
9 be satisfied that it is appropriate to approve it and hear from
10 everybody else.

11 And, I don't think you're saying that we shouldn't
12 hear from everybody else, Mr. Shapiro. But, there's a lot more
13 to it than just the debtor's business judgment. And, I think,
14 bottom line, if we -- if you don't resolve some of these issues
15 when you're coming into court, that's what you're going to have
16 to satisfy the Court that it was a good business judgment and
17 it continues to be a good business judgment, notwithstanding
18 whatever else is out there. So, with that in mind, Mr.
19 Halperin?

20 MR. HALPERIN: Thank you, Your Honor. Alan Halperin,
21 Halperin, Battaglia, Raicht, on behalf of the Committee. As we
22 indicated earlier, Your Honor, I'm joined by Michael Sirota, my
23 co-counsel of Cole Schotz. I'd like to initially address the
24 adjournment request to Your Honor. And, then I'd ask Mr.
25 Sirota to talk about certain aspects of the document turnover

1 to HIG and scheduling issues, as he's going to be primarily
2 responsible for trial work.

3 THE COURT: Can we just back up one -- the orders for
4 your appointment haven't been entered yet because they're
5 waiting the 20-day period. But, I wanted to have a sense of
6 how -- why the Committee needs two -- two counsel and how
7 you're dividing up the services, if you wouldn't mind.

8 MR. HALPERIN: Absolutely, Your Honor. First and
9 foremost, there is a rule in New Jersey, as you're better
10 familiar than I am, that we are required to have a local
11 counsel. And, in addition, we had certain limited conflicts,
12 one of which could be very significant with respect to CIT.
13 So, in addition to needing local counsel, we were going to need
14 a conflicts counsel.

15 And, we've worked with Cole Schotz in the past. We
16 have a good rapport with them. I've had cases specifically
17 with Michael and his partner Ilana in the past. And, it was a
18 good working relationship, and so it made perfect sense. It
19 was a good overlay and a good fit for the two of us. They
20 didn't have conflict with people that we did, we didn't have
21 conflicts with people that they did.

22 In addition, there are -- there's no -- there's no
23 ego involved here, so to speak. So, to the extent there are
24 certain individual issues or things, we're happy to say to
25 them, to the extent they have time or manpower to do it, here,

1 take this and deal with it. We're not enmeshed in the same
2 things; we're not duplicating each other.

3 The only time that there is some duplication, I
4 suppose, is now, because you've got so many big ticket items
5 that are enmeshed with each other. If we had just had the
6 disclosure statement standing discreetly and the financing
7 standing discreetly, it would be very easy. I'm going to let
8 you deal with the financing, we'll deal with the disclosure
9 statement.

10 It would be just -- but, he can't. It's all
11 intertwined and meshed. So, there's a little bit of an overlap
12 right now. But, we envision, as we always did at the
13 beginning, when we go forward, that there will be no overlap
14 and no duplication. And, we recognize that our fee
15 applications are going to be submitted to scrutiny on that
16 point.

17 And, we have discussed this with the U.S. Trustee who
18 has indicated he has some comfort on that because, in fact,
19 there is a good fit. We do fit together well with respect to
20 this case and the conflict issues. Okay.

21 Given the flurry of filings, the supplemental
22 amendments that -- to the disclosure statement that were filed
23 within the last -- I think it was less than 48 hours ago -- we
24 recognize the common sense appeal of an adjournment of the DIP
25 and the disclosure statement. The problem that the Committee

1 has is that we have a broken process here.

2 And, we've made requests of the debtor in connection
3 with the adjournment of a very limited list of things that we'd
4 like to see happen in order to fix that process so that we
5 would be able to move forward in terms of presenting our case
6 to the extent we have to. But, even better, that we actually
7 could maybe fix the process a little bit and not have a fight
8 and move forward consensually.

9 As Mr. Felger represented -- and he represented
10 accurately -- most of the issues were addressed. But, the two,
11 I would say, most fundamental to fixing what we perceive as a
12 broken process remain open. And, that is getting information
13 immediately to Arch Acquisition, the HIG subsidiary, so that it
14 can conduct the due diligence that it needs to be able to
15 finish up and conclude that, yes, we're prepared to provide a
16 replacement DIP.

17 I would roll the disclosure statement into that.
18 But, in order to make it in bite size chunks and make it a
19 little easier, because the debtor did express some concerns, we
20 did say break it out, bifurcate it, and we'll deal with the
21 second tranche later.

22 And, the second was more procedural. And, Your Honor
23 kind of addressed that just a few moments ago, that, at the
24 adjourned hearing, if a suitable replacement DIP term loan
25 lender were available, that we would be able to at least

1 present it to the Court and that we wouldn't be facing any
2 procedural gamesmanship, because time is short. We don't have
3 a lot here.

4 I -- I like to think I'm not prone to hyperbole, and
5 I don't think I'm giving you any here. But, this is perhaps
6 the most egregious plan I've seen in practice. It's very
7 complicated, it's very thick, there's a lot of paperwork, and
8 the plan and the DIP are tied together. And, they're
9 choreographed to basically deliver a business to a buyer on a
10 private deal that was negotiated before the bankruptcy when
11 there were no creditors and anybody else involved in the
12 process to sort of keep an eye out for what was maybe in their
13 best interest.

14 The process provides control to Versa. They hold a
15 79.9 percent equity vote of the parent debtor. And, it has
16 very restrictive DIP loan terms that are designed to protect
17 that plan to prevent anybody from coming in and maybe
18 presenting some sort of competition to get the assets. From
19 our perspective, as a result, we have a debtor that's refusing
20 an open process and won't provide information to parties that
21 are interested in making competing offers or, alternatively,
22 and specifically with respect to the HIG subsidiary, a
23 competing DIP loan on much better terms.

24 There are several parties that have reached out to
25 the Committee, we believe the debtor as well, and, in fact,

1 even to the Court, pleadings that have been filed, to express
2 their interest and their frustration with the process. As we
3 noted in particular, Arch Acquisition, which is a subsidiary of
4 HIG, has committed substantial resources to get themselves up
5 to speed, to prepare an alternative DIP loan, to prepare an
6 alternative plan, first an asset aqui -- an APA, and then we
7 said, no, that doesn't really work.

8 It's really got to be apples to apples, and we don't
9 want to see something fall through the cracks. We need to see
10 -- if you really want to do this, show us, prepare a plan.
11 And, they committed the resources to do all of this in face of
12 the fact that all of these documents were out there, and there
13 was a lock up for Versa. Yet, they still committed the
14 resources, and they're still here. And, they're still filing
15 papers with the Court, and they're represented today.

16 They have indicated that they have due diligence
17 requests. As Mr. Felger accurately represented, it's a very
18 limited due diligence request with respect to the DIP loan and,
19 again, short with respect to their plan process, although it is
20 somewhat longer. And, despite repeated requests from both HIG
21 and from the Committee, -- and, you know, Mr. Felger
22 acknowledged that I have been harping with him of this -- the
23 debtors and Versa have re -- provided HIG with nothing, and
24 they have refused to provide HIG documents.

25 From our perspective, the debtor has a fiduciary

1 obligation to its creditors and to the estate, and it's
2 consistent with bankruptcy law, to seek the highest and best
3 value for the businesses and the assets. Yet, the debtors and
4 Versa, who control the debtors, take the position that even
5 providing due diligence to HIG would be effectively a default
6 under the DIP loan. There's nothing in the DIP loan that says
7 that.

8 But, to the extent HIG says, listen, we're not doing
9 this because we're a lending institution, we're prepared to
10 substitute in for them because we want to make a run of these
11 assets, that would bring it within the realm of a default --
12 and, -- default -- I'm sorry -- under the DIP loan and the
13 interim order.

14 So, two days after the case files, they're before
15 Your Honor. Quite frankly, from my perspective, they're
16 presenting you with a very difficult task because I saw the
17 volume of papers that were filed. There's, like, no notice.
18 And, that is a mound of papers to go through. You know, we
19 didn't get through it in two days. That's why we had requested
20 adjournment initially and said we need time, we've got to get
21 our arms around this. We're not even sure exactly what you're
22 proposing or asking for.

23 But, in two days, Your Honor is presented with
24 uncontested testimony and a record that says this is what we
25 gotta do, only game in town, we're gonna shut down. There's no

1 creditors there to provide any counter -- counter balance.
2 There's no -- virtually no notice. It's two days after, and
3 it's very difficult for people to come in.

4 And, so, the order is entered. And, now they're
5 using that order effectively as a weapon to hijack the process.
6 Effectively what we're going told is, you know, someone is
7 going to compete with us on this plan, we're not giving them
8 due diligence and you shouldn't, because that's a default and
9 we just may pull the plug and not fund. That's pretty
10 outrageous from the Committee's perspective.

11 The Arcus DIP loan is replete with overbearing and
12 egregious provisions that are designed to defend the transfer
13 of the business to Arcus without any competition. I mean, for
14 example, the EBITDA and other covenants that were in the
15 document -- most -- many of them -- some of them -- let me not
16 over -- overstate. Some of them were in default virtually from
17 inception which provides Arcus a position of leverage further;
18 I'll waive or, if I get concerned, I won't waive. And, then
19 I've got greater leverage over the process.

20 There's a deadline of May 30th for confirmation of the
21 Arcus plan, -- not a plan that pays them out, but the Arcus
22 plan and substantial confirmation of the Arcus plan by June
23 30th, the failure of which are more defaults. There's no time
24 for a proper process in this bankruptcy.

25 Even though they're arguing that they can't -- that

1 no one can shop and no one can provide an alternative DIP,
2 there's a right of first refusal in the DIP that, if someone
3 else comes up, that they have a right to -- to match that.
4 And, again, as I noted earlier, there would be a breach of
5 effectively a no shop provision if you start providing
6 information to these entities.

7 The debtors released Arcus and its affiliates and its
8 principals upon entry of the interim order of everything, which
9 would include if there were any breaches of fiduciary duty and
10 the like -- just remember they are in a position of control --
11 arising before the date of interim order, whether it related to
12 the DIP or not. It's very broad. I think that's in Section
13 4.5.

14 They're trying to exclude the Committee monetarily
15 from the process, so the Committee will not be able to put up
16 an argument, because in the budget they put line items that are
17 so draconianly small -- in fact they're dwarfed by the payment
18 of fees for the two DIP lenders which are, between the two of
19 them, total almost \$1M under the loan. And, so that, if the
20 debtor were even to pay those fees, that would be another
21 default under the DIP loan. You can't pay them. They're
22 trying to lock it up that way.

23 And, that's on top of the liens on avoidance actions,
24 the 506C waiver, coupled with the vesting of actions, whether
25 avoidance actions or fiduciary duty actions, or anything else,

1 back in the reorganized debtor under the plan. And, under the
2 plan, it goes to Arcus, so those never see the light of day if
3 there are any issues.

4 From our perspective, the fundamental principles that
5 underlie Chapter 11 mandate a fair and open process. Maximize
6 value for unsecured creditors. From our perspective,
7 management and ownership has fiduciary duties to the creditors.
8 But, the process they've set up tramples all over those duties,
9 it just does. The process is broken, and we think it needs to
10 be fixed here and now.

11 What we want to see is the process opened up so that
12 other people can come in and kick the tires. With respect to
13 who gets what information, I'm going to -- I'm going to Mr.
14 Sirota on that because he's going to be dealing with it. But,
15 I would say this. I do think it rings a little hollow to say,
16 well, you know, who did we give information to.

17 I think there's a vast difference between someone
18 that has stepped up, put in the hours to put in replacement
19 documents -- it's not like you're just jotting down a note. I
20 mean, this is a replacement plan or a replacement DIP loan.
21 There's a difference between someone like that and someone who
22 sends a note, hey, I'd like to see your information.

23 And, as I've also told them repeatedly, we can
24 address those issues. We can address who gets what
25 information, when. We'd like to engage in discussions to set

1 that up. But, there is no discussion to set that up. All we
2 keep hearing is why it can't be done, and we have a problem
3 with that.

4 THE COURT: Let me just ask you the one question as
5 far as the confidentiality information that was in Mr. Felger's
6 e-mail to you. How do you respond to that as far as concern --
7 I mean, it has to be a concern of the Committee. I mean, you
8 are talking with competitors and -- how -- how do you propose
9 that that is addressed -- that issue can be addressed?

10 MR. HALPERIN: There are a couple of things. And,
11 these are just off the top of my head, Your Honor. First, I
12 think that also rings a little hollow because, as Mr. Felger
13 indicated, they had some sort of a process. And, we take issue
14 whether it was anything like what they're dealing with now.

15 It's very different when you're a year and a half ago
16 and you're talking about a different spectrum of dollars that
17 you're looking for a business than what you're looking for in a
18 bankruptcy, especially when it's compared to the Versa plan.
19 But, that --

20 THE COURT: If you're going to -- the debtor's
21 position that, you know, they weren't there and they're here
22 now kind of thing -- I'm not getting into that.

23 MR. HALPERIN: Okay.

24 THE COURT: I'm just -- I'm just talking about
25 basically -- I'm hearing what you're saying --

Halperin - Argument

37

1 MR. HALPERIN: The confidentiality issues.

2 THE COURT: -- about the -- about the debtor's
3 responsibility and fiduciary --

4 MR. HALPERIN: Yes.

5 THE COURT: -- duty. I want to know --

6 MR. HALPERIN: How you --

7 THE COURT: -- how you -- if you think that -- or how
8 you think you can protect the debtor's information so that we
9 can have this full and fair hearing.

10 MR. HALPERIN: Okay. And, there are two points to
11 that. The first one -- and I apologize if I wasn't clear in
12 getting to it. But, I think the complaint itself rings a
13 little hollow because they indicated they've already done this,
14 and they've already signed confidentiality agreements, and
15 they've already provided information to other people to do
16 this.

17 So, I don't know why all of a sudden now, when it was
18 okay back then, now it's not okay, because they're competitors.
19 They were competitors back then too, as was everybody else that
20 was involved. If that confidentiality agreement doesn't work,
21 then we sign a new one. If there are provisions that need to
22 be corrected in it or fixed, absolutely, you deal with that.

23 We signed a confidentiality agreement, as did Arcus
24 and, I believe, CIT. I was told they did. We actually worked
25 off their form. So, I don't see why another one can't be

Halperin - Argument

38

1 done --

2 THE COURT: Was there anything --

3 MR. HALPERIN: -- for somebody else.

4 THE COURT: -- in Mr. Felger's e-mail to you that you
5 felt couldn't be addressed by confidentiality agreement,
6 without being specific. I know he --

7 MR. HALPERIN: I pers --

8 THE COURT: -- doesn't want to get specific on the
9 record, but --

10 MR. HALPERIN: I personally don't, whether it's
11 confidentiality agreement or perhaps tweaking of the
12 information. I mean, for example, there may be certain
13 discreet pieces of information that would make it very easy for
14 a competitor to then, you know, target some of your customer
15 base.

16 But, there's ways of doing blinds of stuff like that
17 or putting intermediaries in to water things down or mask them
18 so that certain information isn't provided. Those are things
19 that can be addressed. And, I don't pretend to have all the
20 answers sitting here.

21 But, the point is we're in a bankruptcy. This is not
22 a private transaction. This is not a -- you know, oh, my
23 goodness, we shouldn't allow the competitor to come in. Your
24 Honor, you know better than I do that constantly there are
25 asset sales in bankruptcy. And, who are the most likely

1 suitors that bid on these things? Strategics, because it's
2 worth the most to them or it can be worth the most to them.

3 And, so, while I agree there are issues -- and, I
4 said to Mr. Felger at least once or twice, you know, certain of
5 the specifics that you've raised, lets try and address them.
6 I'm not saying they're illegitimate concerns. But, you can't
7 shut people out. We need an open process. I'd like to hand it
8 over to Mr. Sirota, if I may.

9 MR. FELGER: Can I just interject one comment on my
10 e-mail. The confidentiality was just one small piece of my
11 e-mail. There were a number of concerns raised. For instance,
12 an alternative DIP to take out Arcus is 25 of the 85. Do they
13 have someone to step in and do the other 60 because I don't
14 know, standing here today, whether CIT will do that. That I
15 can say on the record.

16 THE COURT: But, --

17 MR. FELGER: But, that's one of the concerns I
18 raised.

19 THE COURT: But, what I'm -- but, that really goes to
20 you've got to give the information so you see if they're going
21 to step up. I mean, --

22 MR. FELGER: Well, -- but, also --

23 THE COURT: -- truthfully, Mr. Felger, I -- you know,
24 I do -- I know that your client was in -- was in and still is
25 in a very difficult position. And, I'm not unmindful of the

Felger - Argument

40

1 fact that Arcus stepped up, and they were there, and it was a
2 difficult situation. So, I'm not drawing any conclusions or
3 making any determinations. I'm not getting into good faith and
4 bad faith that everybody threw around in the papers that I've
5 seen.

6 But, -- because, if that's still an issue, I'll be
7 hearing that when we get to the fin -- whether it's today or
8 some other day -- the final approval for the financing and the
9 final approval for a plan. All those issues will come out
10 unless they all et resolved.

11 MR. FELGER: Right.

12 THE COURT: But, -- so, for today's purposes,
13 considering the everybody was trying to go forward in good
14 faith, --

15 MR. FELGER: Right.

16 THE COURT: -- that still doesn't mean that other
17 parties to the case don't have a right to know what's going on
18 because we're -- we're doing everything on a very expedited
19 basis, which I'm making the assumption is still necessary
20 because of whatever I -- what I heard at the least hearing --
21 and, I haven't heard anything differently -- that you have to
22 at least give enough information to the Committee and the
23 parties that want to proceed this for you then to come back and
24 say, well, notwithstanding that, this is still the best offer
25 because -- and -- which you may do, you may not do.

1 I -- you know, I know you've got responsibilities
2 under the agreement and it ties up the debtor at certain times.
3 And, that was a lot of the reason that the U.S. Trustee
4 requested and the Court approved certain things in -- that were
5 not finalized in the original financing which tied the debtor
6 up, but still left the Committee with that responsibility to
7 look into the -- the liens, to look into whether there are
8 causes of action, to address the avoidance action position, and
9 all of the other things that, by intention, were left open for
10 the Committee to have a chance to do -- they have to be able to
11 do their job.

12 MR. FELGER: Right. No, I -- I simply -- simply to
13 clarify if I misspoke about my e-mail, it wasn't only limited
14 to --

15 THE COURT: Well, --

16 MR. FELGER: -- confidentiality issues.

17 THE COURT: But, -- and, if it was -- and, if it went
18 in detail to whether -- whether this will work or not -- I
19 mean, time will tell. And, it's going to be a short time. So,
20 I don't believe, from what I've heard, that the debtor can go
21 for a long time and still make any of this work.

22 So, that being -- that being said, I'm concerned
23 about -- I am concerned about confidentiality. To the extent
24 that this doesn't end up being the best deal, I don't want
25 there to be a problem with the deal that exists now or the

1 continuing operation of whatever ends up being the reorganized
2 debtor when we get there.

3 And, I don't think the Committee wants that either,
4 because I have to assume that their constituency wants a
5 reorganized debtor that's still going to do business with them,
6 and so on. So, I think that everybody wants that same result.
7 And, I'm trying to find if there's a way that we can get there.

8 MR. FELGER: Right.

9 MR. SIROTA: Judge, good morning, --

10 THE COURT: Good morning.

11 MR. SIROTA: -- if the Court please. What's so
12 obvious -- what is so obvious to this Court apparently is not
13 so obvious to this debtor that is in a very difficult
14 predicament. But, unlike the difficult spot that Mr. Felger
15 addressed twice, we're not in a difficult spot.

16 We have not taken this case and assigned our
17 fiduciary duty to a buyer or anyone else. The fact that Mr.
18 Felger has to go to Mr. Shapiro and ask him whether or not
19 documents can be produced that would run a spirited process,
20 from our perspective, is where all of this drama lies.

21 And, that is, how are we ever going to get to the
22 core issue of whether there are higher or better offers under
23 this very hideous process that's been presented to the Court?
24 If I were to come to Your Honor with a closely held company and
25 individuals and present the first day an application that said

1 my clients are going to be the DIP lender, they're going to be
2 the buyer and the debtor-in-possession, I would expect to be
3 driving back to Hackensack, New Jersey with a Trustee
4 appointed.

5 Now, this process is equally hideous. And, in fact,
6 it's more hideous because it has the debtor locked up so many
7 different ways that poor Mr. Felger can't even, without
8 worrying about Versa threatening law suits and other things,
9 get us some basic information. We were dead set against this
10 adjournment today because, frankly, we thought adjourning it to
11 another day would be a complete waste of time.

12 Any adjournment of a process that freezes out the
13 market in a bankruptcy proceeding, to us, is simply so
14 antithetical to the Bankruptcy Code that it didn't deserve to
15 be kicked off a week or a day. But, Mr. Felger came back and
16 addressed most of our concerns, leaving the most important one
17 open for debate today.

18 And, so, Judge, I think that it's fundamental --
19 whether it's a protective order, the Court does it all day
20 long, the parties do it all day long -- that we get to HIG what
21 they need to tell us whether it's a \$25M deal, \$85M deal,
22 whether CIT is in or out.

23 But, those requests and those discussions should not
24 go through Versa who's sitting there pre -- telling us that
25 their answer to everything is, don't worry, we're going to file

1 an amended plan and disclosure statement, put your Committee on
2 the head, throw them another nickel, and everything is going to
3 be fine because the debtor's business judgment is going to
4 control. We should address today head on that that is a dead
5 end road because a lot of money is going to be spent.

6 Your Honor asked about the Committee representation
7 and duplication. We are investing a fortune in addressing a
8 defective process when, if the process were open, we could all
9 be on our way to what's done in this court every day, invite
10 HIG or whoever else is out there to participate. Versa is more
11 than welcome to put more money into this equation and move on.

12 This is not a simple negotiation over a dividend, a
13 506C waiver. No one on this side of the table is selling out a
14 client because they're going to expand the carve out. We could
15 care less. The process needs to be open. This is the first
16 phase.

17 I will suggest, Judge, that even in giving HIG the
18 documents is not going to avoid the traffic accident on the
19 return date. We have spent time preparing for today, several
20 witnesses, both cross-examination of the witnesses they
21 produced to you on the first day, as well as other witnesses to
22 talk about this hideous process.

23 And, I respectfully suggest to this Court Your Honor
24 will not be happy with the representations made upon which you
25 relied in entering in these interim orders. And, we plan to

1 establish to this Court that Your Honor was given, at best, a
2 very, very incomplete story. And, I'm not going to burden the
3 Court or the record with some of that, at best, incompleteness.
4 But, it's critical that this process be open.

5 And, Judge, I'm not aware of any statutory provision
6 that says, if you hit a certain level of employees, the rest of
7 the provisions of the Bankruptcy Code go out the window. We're
8 very sensitive to the future of this business. We're very
9 sensitive to the fact that there are a thousand employees.
10 But, that shouldn't be an excuse for Versa to steal this
11 company under the cover of night with no open and notorious
12 process.

13 The Committee is not going to sell out its fiduciary
14 duties for the prospect that some people do business with this
15 debtor in the future. They've been guided very carefully.
16 And, they understand that the objective is to maximize value.
17 And, they hear from their lawyers loud and clear that the
18 process presented at this point is exactly contrary to what
19 should be happening.

20 I heard Mr. Felger say he's bound to support Versa.
21 Very troublesome. He's bound to support the Code and a
22 process, not blindly support Versa. And, if it's a problem,
23 then I think, at the next hearing, we should talk about who may
24 be free from that binding of Versa and move forward in a much
25 more even keeled fashion.

1 So, very simply, Judge, we think the documents should
2 be produced. If we can't agree, as professionals doing this
3 every day, on a protective order to get those documents
4 produced today, then we should stay here and be guided by Your
5 Honor under what conditions they should be produced. It should
6 be open. And, then we'll be back here suggesting to the Court
7 hopefully that we have a competitor, somebody who stepped up
8 already prepared to offer more money, but more importantly --
9 not more money, more money in an open process.

10 HIG has said whatever we give to the Committee,
11 that's the base line. Versa comes in, HIG comes in, and we're
12 off to the races. We can't have this locked up, Judge. Thank
13 you.

14 THE COURT: Let me ask you this one question.
15 Assuming that I order that -- or you work out an arrangement,
16 one or the other -- to get these other documents, which were
17 the four and five of the list that Mr. Felger presented, do you
18 think that an adjournment would be valuable?

19 MR. SIROTA: I do, Judge, because it would allow HIG
20 to quickly analyze the situation. And, then we would be back
21 here, assuming things go well, taking out Versa, putting HIG in
22 the DIP seat. I understand the CIT complexity. I would like
23 to hear CIT say we'll do a deal with Versa, but not with HIG.
24 I don't believe that will happen.

25 And, if it does happen, HIG will have to evaluate

1 whether they have to write a check for \$85M. And, then we
2 would dispute some of the fees, and tricked up and booby-
3 trapped DIP things that are in there with respect to
4 termination fees and the rest of it.

5 THE COURT: Mr. Brody?

6 MR. BRODY: Thank you, Your Honor. Good morning,
7 Your Honor.

8 THE COURT: Good morning.

9 MR. BRODY: Your Honor, at the outset, I'm just
10 confused. I was always taught that the fiduciary duty of a
11 debtor is to maximize the value of the estate. You've heard
12 that from both counsel from the Committee who were very hard to
13 follow because they laid it out.

14 Your Honor, HIG came in at the beginning of this case
15 and provided the debtor and the Creditors Committee with a
16 commitment letter to loan the debtor money, \$25M, the same loan
17 that Arcus was going to have -- to take Arcus out, but on
18 better terms and, what was most important to us, to open up the
19 process to a competitive bidding, whether it be through a sale
20 under Section 363 or plan -- an open bidding process.

21 And, we were willing to lend the money as long as
22 there was an open process. If, at the end of the process, we
23 won, that's fine. If Arcus won or somebody else won, all it
24 does it maximize value.

25 We sent that in, and we didn't hear much from the

1 debtor. We immediately followed up in days with a full asset
2 purchase agreement -- a full asset purchase agreement, not just
3 a term sheet. We wanted to show how committed HIG is. And,
4 the full asset purchase agreement had a purchase price of
5 approximately \$83M plus the assumption of various liabilities.

6 I personally took the plan that they had and tried to
7 make it was comparable with the claims that was set forth in
8 the disclosure statement and the schedules. And, part of that
9 83 million was a fully pay off or Arcus' DIP and a full pay off
10 of CIT. So, the question of would HIG come here with 85
11 million -- we've already said that we would.

12 We didn't hear from the debtor. We heard from the
13 Committee. The Committee asked us we really want to makes this
14 apples to apples. Can you do it as a plan? We want to make
15 sure that nothing falls through the cracks with respect to
16 payment of claims because, from the Committee's perspective,
17 they wanted to make sure that all the claims were paid.

18 And, by the way, as a side note, Your Honor, among
19 the other differences in our proposal, in addition to paying
20 two DIP lenders, was to provide a pot of money for unsecured
21 creditors of \$5M -- not 500,000 that the debtor is proposing
22 with a two percent distribution, but 5 million.

23 And, Your Honor, I do -- I do -- absolutely do take
24 to heart what debtor's counsel had said, that the future profit
25 is more important than dividends. Your Honor, I think that's

Brody - Argument

49

1 flipping the cart around somehow because the future profit goes
2 to the owner which, in this case, is Versa slash Arcus.

3 But, we were asked to do it as a plan. Your Honor,
4 we committed the resources. We committed the resources, we
5 took the Arcus plan, and we put -- we changed it so that it
6 would -- they could compare the apples to apples, it would
7 create the pot of 5 million, it would do what was being done
8 under Arcus, but better.

9 It allowed for additional payments, for example, to
10 the real estate secured cred -- the real estate taxes, which is
11 represented here by Mr. Klein, and he filed an objection. It
12 allowed for all the other payments. And, Your Honor, we had
13 discussions with the Committee. And, we said, what we want,
14 again, is to have an open process.

15 If this plan is not the most value to this estate,
16 let Arcus or anybody else come forward with more. Whatever
17 process -- we want to talk process as to how to make this an
18 open competitive bidding. Again, we'll lend the money so he
19 debtor can survive through either a sale or plan process.

20 If, at the end of the day, we're not the highest and
21 best off, so be it. That's fine. But, right now, we are, and
22 we want to have this process. Again, we didn't hear anything
23 from the debtor.

24 We were asked to submit our due diligence list with
25 respect to both the plan and the DIP. And, we provided what I

1 think is a short list of documents, documents that should be
2 available to any purchaser. We got no response from the
3 debtor. There's a theme here, Your Honor. And, I apologize I
4 have to say it, but that's what's going on.

5 The Committee came back and said, can you pare down
6 the list for what you need to fund? If we go forward today on
7 a DIP, what do you need to fund? Your Honor, we gave them five
8 items. Five items. Five items.

9 One, we'd like to talk to CIT. We'd like permission
10 to talk to CIT. They haven't responded. We want to make sure
11 that CIT just doesn't go above their \$60M availability, which I
12 don't believe they can under your order anyway. But, we want
13 to talk to them.

14 Two is we want a competitive process. Three is we'd
15 like confirmation that the assets actually exist. And, what we
16 asked for -- and we actually said in my e-mail to Mr. Felger --
17 is the easiest thing is give us a borrowing base certificate.
18 That would do it.

19 We want a revised budget because we'd like to see the
20 actual -- what actually occurred, something they should be
21 putting in to this court anyway. And, we want an order at the
22 end of the day, if we are the DIP lender, that gives us the
23 rights as a DIP lender. That's our list. We never heard from
24 the debtor.

25 Today you hear confidentiality. Your Honor, it's the

1 first I'm hearing from Mr. Felger that there's any issue of
2 confidentiality. HIG signed a confidentiality agreement on
3 July 12th, 2007. It's a three-year confidentiality agreement.
4 So, even if there is any confidentiality issue, we're bound by
5 a confidentiality agreement.

6 The debtor says, well, we're not a debtor-in-
7 possession, so maybe this confidentiality agreement doesn't
8 stand. They never asked us for a new one. We'll sign a new
9 one. That's fine. It's not an issue. Certainly the documents
10 we're asking for are not so egregious. Even if we are a
11 competitor, we haven't asked for customer lists. We haven't
12 asked for anything that a competitor could somehow twist and
13 use against them. Your Honor, we've shown our commitment.

14 To add to this, Your Honor, the Committee asked us --
15 we have your letter of commit -- we have your letter of
16 commitment with respect to the DIP. We have your APA which
17 converted to a plan. All these have been provided to the
18 debtors as well. Can you give us other documents with respect
19 to the DIP? No problem.

20 We provided the debtor and the Committees with a full
21 DIP agreement and a full proposed DIP final order. We're real,
22 we're ready. We're committed, we have the funds. They won't
23 turn over the smallest documents that should be turned over to
24 anybody that walked into this Court in a bankruptcy process.

25 They are tied to Arcus. They claim they're bound.

1 And, therefore, they've breached any duty that they have to
2 maximize the value of this estate. And, as Mr. Sirota
3 correctly stated, perhaps at the return date of the next
4 hearing, we determine who is not bound and who truly can comply
5 with the duties of a debtor -- a debtor-in-possession under the
6 Bankruptcy Code to maximize the value. A competitive process
7 is the only way, Your Honor.

8 THE COURT: Thank you. Mr. D'Auria?

9 MR. D'AURIA: Thank you, Your Honor. I'd like to
10 make three quick points, if I could, Judge. Thank you. A
11 thousand employees, Your Honor. If we can get past the hurdle
12 that is being debated involving getting due diligence
13 information to HIG and an adjournment keeps the case alive, and
14 a thousand employees have somewhere to go to work tomorrow, I
15 have no objection to an adjournment.

16 But, secondly, getting the documents to HIG. We
17 respectfully assert that must happen. But, more than that, the
18 next step is any document given to HIG for the purpose of doing
19 due diligence, whether it's in the guise of doing a competing
20 DIP or in the guise of doing a competing plan slash sale -- any
21 such information has to be put in some sort of depository.

22 Whether it's a binder, a box of documents, or a room
23 of documents, it's got to be preserved, because the concept
24 that it should be available to the market is one that we are
25 not going to forget to remember at a final hearing on the DIP

1 or a final hearing of confirmation. We respectfully assert
2 that -- that any such information has to be preserved in some
3 sort of third copy depository. And, the only reason why I mean
4 third copy is I'm assuming HIG number one, Committee number
5 two, or whatever, Your Honor.

6 And, my third and last point, Your Honor, is this
7 whole conversation revolves around one point. Arcus is in
8 control of the debtor and of this process. And, what I'll call
9 Felger's dilemma -- Mr. Felger is a gentleman. But, his
10 precarious position is the product of how this case entered
11 into Chapter 11. But, it's in Chapter 11 now.

12 And, the developments from the first day hearing on
13 March 18th through today have only fueled the concerns that I
14 made at the very outset of that -- of that hearing. Without
15 belaboring the points, I'll leave it at that. But, if we're
16 going to get past the hurdle of HIG's documents, my number one
17 point for today on that issue is that the documents should be
18 preserved in some sort of depository so they're available to
19 the market at some other time. Thank you.

20 THE COURT: Mr. Shapiro?

21 MR. SHAPIRO: My apologies for giving the Committee a
22 continuance last time, because apparently they're not
23 interested in giving continuances this time. They're ready to
24 go forward and beat me up and kill me, and that's fine. So, I
25 won't make that mistake again. But, putting that aside, we are

1 here today --

2 THE COURT: That doesn't mean that the Court
3 wouldn't have granted them -- granted you the adjournment or
4 grant them the adjournment. I -- I noticed, I did see a lot
5 of little language in there that this wouldn't agree to it.
6 But, I mean, the Court is going to make the final call on
7 whether a case should be -- a matter should be adjourned or
8 not. And if there's -- if either side doesn't have enough
9 time to respond to something, that's going to be grounds for
10 an adjournment.

11 MR. SHAPIRO: I appreciate that, Your Honor.

12 THE COURT: Assuming that the status of the case
13 allows it.

14 MR. SHAPIRO: Agreed. Agreed. Status quo is
15 maintained, at least to today. And, obviously, we're having a
16 hearing on the continuance that's turning into something very
17 different.

18 I -- I guess, Your Honor, everybody's concerned with
19 the process, and I -- I guess I'm confused myself. Because
20 every time I see a 363 sale -- and the case is going back when
21 I had a full head of hair and a thin waist -- said, "We like
22 plans because plans give people all the bells and whistles and
23 the rights to beat me up, to depose me, to ask for more money,
24 to prove feasibility, to prove it's fair and equitable.
25 That's what this was designed for.

1 So we're not fighting over a process, we're fighting
2 over which process. To come here and say that a person that
3 makes a loan, that's providing for it, that has a debtor that
4 is defaulting under an agreement, and then that's a bad thing
5 that they're in there -- we are asking for this process.
6 They're asking for a different process. If the process is
7 that 1121 doesn't exist anymore, that no debtor is allowed to
8 go forward and try to convince Your Honor through that process
9 with all the bells and whistles that the Committees have and
10 that other parties in interest have, then I don't know what it
11 means anymore.

12 We filed a plan the first day to do that, to start
13 that process, and they're saying, no, we don't want that
14 process. Well, then, tell me what it means. We're here, we
15 provided the funding and certainty of completing that process.
16 They're saying, open it, throw that out, and maybe -- maybe
17 they'll convince CIT to come in and stay with them. Because
18 doing 25 million without the 60 is not going to get you to a
19 process. And, by the way, Versa, I want you to stay in and
20 fund that -- whatever this new process is. We appreciate that
21 concept. What I guess we're saying is, we bought the package
22 before you and we're asking you to look at effectuating a
23 process.

24 Now, there's a lot of fiduciary duty thrown about
25 that Mr. Felger's client shouldn't have done what he did

1 before, and we did something nefarious. If I were to tell
2 Toyota Motor that I was going to let General Motors make a
3 lien on their assets while they're in a bankruptcy proceeding,
4 you're worried about Versa being in alleged control and
5 pulling a trigger. You want a competitor who can say today,
6 hmm, there's a great way to get rid of a competitor. I just
7 won't waive it, there's a default, the assets are liquidated,
8 and I didn't pay a thing to anybody to get rid of my
9 competitor.

10 Do you feel comfortable installing them as the
11 person that's going to run the process? You think that's
12 better than Arch being there? I hope not.

13 THE COURT: Mr. Shapiro?

14 MR. SHAPIRO: Yes.

15 THE COURT: I don't -- you know, without all the
16 embellishment, yes, you're right, the process is, the debtor
17 has exclusive right to file a plan. But there is disclosure
18 information that should be available to parties. Because the
19 debtor still has to satisfy the Court that what's being
20 proposed is in the best interest of the creditors. And if
21 that is opposed by the Committee or other -- others, who we'll
22 find out when we get to that point, if we get to that point --

23 MR. SHAPIRO: If we get to that point.

24 THE COURT: -- the debtor has to be able to come in
25 and say, we've considered these other options, we see these

1 other options, but this is better because -- and -- and you
2 may be right that, that is what will end up happening, and the
3 Court may approve that. But I can't do that in a vacuum
4 because there are other interested parties to the process.
5 And I'm not going to cast any dispersions on your client. At
6 the time -- you know, without getting any -- any other
7 evidence besides what I have before me, I'm not going to say
8 there was bad faith or -- or unfair dealing.

9 Your client wants to make money and get a good deal
10 for themselves, and the debtor was in a difficult position and
11 they felt -- they feel this is the best. That's what was
12 represented to me. Your client feels it was the best. CIT
13 feels it was the best. But, now, once you get into the
14 bankruptcy, you have other entities that have an interest in
15 there. And, unfortunately, on day one or two, when you were
16 all here before, we didn't have the opportunity to give all
17 those parties a chance to have all their input, and for -- for
18 very valid reasons, in -- in my estimation.

19 The US Trustee wasn't happy with everything that was
20 in your proposal. The Court wasn't happy with everything that
21 was in your proposal. But on that day, based on what the
22 evidence was presented to the Court, that was what this Court
23 saw as being in the best interest of -- of the case. And, end
24 result, that may be what's happened.

25 I'm not going to be able to -- to prognosticate on

1 what's going to be the best long term. I hate to see 1,000
2 people out of work, and I don't think there's anybody in here
3 who doesn't think that that's something that's important. I'd
4 hope that your client feels the same way. But I -- I don't
5 know -- I don't know, from what I've heard so far, who's going
6 to be the better one to keep those people employed afterwards.

7 And -- and, you know, if we get to the point in the
8 process where the debtor's proposing this plan and wants to go
9 forward with it and -- and presents it, that's going to be
10 something that the Court's going to want to hear. But, at
11 this point, what's being asked is to provide information. And
12 the debtor has an obligation to provide information.

13 MR. SHAPIRO: The debtor has an obligation to
14 provide information to the Committee, which it is doing.
15 That's not what's being asked here. You're saying to a third
16 party, other than the Committee, who exercises fiduciary
17 duty --

18 THE COURT: But --

19 MR. SHAPIRO: -- who is a competitor to --

20 THE COURT: I understand that.

21 MR. SHAPIRO: -- to analyze a process -- a process
22 which, unless I missed you say something, you haven't broken
23 yet, or ask you to start a process, then that means breaking
24 it today. So tell me what process you're doing.

25 THE COURT: Well, I'm not sure what process that you

1 think I'm breaking. What I'm saying is --

2 MR. SHAPIRO: Okay. We have a plan and disclosure
3 statement coming up. The Committee has asked for information,
4 depositions, we're giving them that so they can defend against
5 that. That's the process under 1121.

6 THE COURT: I understand that.

7 MR. SHAPIRO: Okay.

8 THE COURT: But how can the Committee, I guess,
9 assert a position that this is not the -- that there's better
10 offers out there? Because that is something that was
11 represented by the debtor on day one, that there was -- this
12 was it.

13 MS. SHAPIRO: Correct.

14 THE COURT: And this was the best thing for the
15 debtor. It was the best for the -- it was best for everybody.
16 That was what was asserted and it needed to be decided day
17 one. And that's what the Court relied on.

18 The Committee's position now, from what they've
19 heard, is that there are better opportunities out there that
20 should be considered. And they wanted to pursue that, and
21 they need the debtor's information to do that. I don't think
22 anything that I've heard of that's been asked for is unusual,
23 especially, in light of the fact that they provided
24 information to this potential buyer. And I recognize that
25 it's a competitor, but, unfortunately, that's what happens in

1 -- in the marketplace.

2 And your client -- you did what you felt was best
3 for your client. They want the best opportunity to make their
4 -- their investment work. In the broad spectrum, I don't have
5 a problem with that. But I'm not going to -- not going to
6 hamstring the Committee's ability to look at this and to
7 assert a position at a hearing that we're going to probably be
8 having very soon on the confirmation of the plan, just based
9 on the limited time frames that are set up here,
10 to --

11 MR. SHAPIRO: I guess --

12 THE COURT: -- to refute the debtor's position that
13 this is in the best interest of the estate. That is basically
14 what they're asking me to allow them to do. I think they're
15 entitled to have their right to do that.

16 MR. SIROTA: Judge, can I -- can I just clarify one
17 thing, please?

18 THE COURT: Yes, Mr. Sirota.

19 MR. SIROTA: Mr. Shapiro is going to the ultimate
20 the process and Your Honor addressed the confirmation process.
21 The hearing that was on for today that will be adjourned has
22 to do with whether or not this Court can make a finding, at
23 lease initially, of good faith on the debt. And so the debtor
24 has to come forward -- forget the ultimate confirmation. And
25 what Mr. Shapiro's client is trying to do is hide the two

1 together to prevent them from replacing the DIP. It may be
2 that the upshot is that we replace the DIP next week. And if
3 his client wants to stay in as a plan participant, they can do
4 that. But the DIP here, and in good faith, comes first.

5 THE COURT: I mean, we're also here on disclosure,
6 and there were some issues about the viability of the plan, so
7 they do kind of run together. But, yes, you're right. I
8 mean, that is a separate issue in and of itself whether the
9 final hearing on the financing should be approved.

10 MR. SHAPIRO: But the financing provides for the
11 ultimate 1121 and 1129 finding. I appreciate that you're
12 saying we're going to separate them, but you can't because we
13 didn't come in here as just the DIP lender. We came in here
14 with a process under exclusivity.

15 If -- if you -- I guess what I'm saying, Your Honor,
16 is, so my client, if you're going to rule the way it appears
17 you're going to rule -- I'm not sure what you're ruling. I
18 shouldn't take where it's headed. Your mouth, my apologies.
19 If -- if you're allowing something to happen between now and
20 the final date hearing, then you have to say exactly with whom
21 and what. And then we have to understand that --

22 THE COURT: I'm not sure what you're -- what you're
23 suggesting that I'm allowing. I'm being asked to order that
24 certain documentation be provided to the Committee in order to
25 provide --

1 MR. SHAPIRO: No, but the --

2 THE COURT: -- and to provide to the --

3 MR. SHAPIRO: Okay. Because it's clearly being
4 provided to the Committee. Like, nobody say that we're
5 sitting here saying if they don't have the documents to
6 exercise their duty. They're getting everything that they
7 want. That's not what's being asked. They're saying for you
8 to go outside the Committee and outside their fiduciary to a
9 competitor. That's what's being asked today.

10 THE COURT: But it's not being asked to be given to
11 a --

12 MR. SHAPIRO: That's all --

13 THE COURT: -- competitor. It was asked to be
14 given, I guess, to a competitive bidder, which is a -- which
15 is different. I mean, if it was another lending institution,
16 investment -- investment company, would you have -- take a
17 different position, oh, that was okay because it's not a
18 competitor? I don't think so.

19 I mean, I understand what your position is, but it's
20 not really based on the fact they're a competitor. Your
21 client made a deal they like, and they wanted to go forward.
22 And, absent anything else I've heard, that's -- that's fine.
23 If the debtor wants to pursue that, that's fine. But we're
24 talking about a discovery process that really is inherent in
25 the bankruptcy process. If -- if you want this Court to

1 approve to it, the debtor is going to have to satisfy me that
2 this financing meets its requirements under the code and
3 ultimately the plaintiffs.

4 And I know they are tied together, but there are
5 separate requirements, and -- and a lot of it has to do with
6 -- especially, with a lot of the -- I want to say -- describe
7 it as tie-ups that are in this -- in your financing, which the
8 debtors consented to. And we -- we specifically left open for
9 the Committee and the US Trustee and the Court to review
10 further. That's why we had interim and a final. Parties have
11 a right to look at that and see if that is in the best
12 interest.

13 I mean, quite frankly, when we were here on the
14 first day, I wouldn't have been -- I mean, I expected the
15 Committee to have issues with certain things, but I -- there
16 may -- I fully expected there may not have been anybody else
17 stepping up and we'd be here today just on some of the issues
18 about compensation and distribution and dividend and those
19 things and that was the only thing.

20 But that's not what has happened in the -- in these
21 last two weeks. And I think the Committee is entitled to
22 explore the position they want to take with regard to approval
23 of the financing and ultimately the plaintiff. And it's not
24 lost on the Court that in this case and in many cases in --
25 especially in our market today, that the debtor -- I mean, I

1 happen to think the debtor still has a fiduciary duty, but
2 they are in a difficult position, based on what they've --

3 MR. SHAPIRO: But Your -- okay. I agree, the debtor
4 is exercising its fiduciary duty now by saying the proverbial
5 bird in the hand.

6 THE COURT: Well, and -- and, you know -- you're
7 going to have --

8 MR. SHAPIRO: And -- and we have the go -- all we're
9 asking you is the opportunity to go forward with that.

10 THE COURT: Today?

11 MR. SHAPIRO: No.

12 THE COURT: Okay. Well, what I'm saying is, I -- I
13 think Mr. Felger is going to have an opportunity to convince
14 me that that is in the best interest of the estate, that it
15 meets the requirements of the code, that it is -- the bird in
16 the hand is the best thing. And sometimes it is, but the
17 process needs to be open enough for the parties to get -- for
18 the Committee, in particular, because, basically, the debtor's
19 already given up whatever they -- they're going to do in this
20 case. And it's really burdened -- and the burden is going to
21 be on the Committee. And I think you recognized that from our
22 first hearing, and it's certainly clear now. And --

23 MR. SHAPIRO: I agree.

24 THE COURT: Right.

25 MR. SHAPIRO: I'm prepared to deal with it. And

1 what I'm concerned about is that I have exclusivity, nobody
2 has filed a motion to terminate it yet. And now you've
3 started -- I'm -- I'm just trying to understand what was --

4 THE COURT: I'm not -- I'm not -- I'm not saying
5 that they can file a plan or I'm going to consider a plan. I
6 am looking now at providing the -- for the debtor providing me
7 information that they believe that Mr. Felger believes would
8 violate some of the debtor's requirements to your client,
9 provide information that is necessary for the Committee to
10 make their determination. I realize that information is going
11 to go to a third party who --

12 MR. SHAPIRO: That's what I'm --

13 THE COURT: -- is either they're bound --

14 MR. SHAPIRO: -- I want to understand. Who the --

15 THE COURT: -- by a confidentiality agreement or
16 will be bound by a confidentiality agreement, which I'm very
17 confident that counsel that is before me is completely
18 prepared --

19 MR. SHAPIRO: Capable of doing that, if that's what
20 Your Honor is instructing?

21 THE COURT: Yes, without any question. I have no
22 question that that -- that can be accomplished. And that is
23 something that is important to the Committee for it to be able
24 to do its job, and I think it's appropriate to allow it.

25 That doesn't mean that Mr. Felger can't argue that

1 notwithstanding that other potential offer, this is better.
2 I'm -- that's what I assume I'm going to hear when we get to
3 the -- to the hearing, unless everybody resolves these things,
4 which I don't foresee that right now. But I've been surprised
5 before.

6 MR. SHAPIRO: Never know.

7 THE COURT: So today I -- I think the Committee is
8 entitled to what they need. And this is something they need
9 to have accomplished in order for them to their point.

10 MR. SHAPIRO: I have no issue, I am not arguing
11 before you and trying to stop the Committee from getting
12 anything. I'm asking you to focus on the piece, when they to
13 whom, for what purpose and why, between now and the --

14 THE COURT: Well, today -- today they're asking it
15 to go to HIG. And I realize they're a competitor, and you can
16 put whatever requirements you need to in the confidentiality
17 agreement. As Mr. Halperin suggested, there's some ways you
18 can -- they're not asking for a customer list or some -- I
19 mean, what's being asked for, I don't think is -- seems to be
20 that, I guess --

21 MR. SHAPIRO: Troublesome as to what they can do
22 with it.

23 THE COURT: Overwhelm --

24 MR. SHAPIRO: Understood.

25 THE COURT: Right. Right. But, you know, if you

1 think there's something in there -- that list that was asked
2 for today that -- that jeopardizes the -- the integrity of
3 your client's interest or of the debtor's interest, Mr.
4 Felger's concern, put some -- some restrictions on with
5 required to it. I'm more than willing to have a telephone
6 conference. We can go over anything we want, as long as it's
7 before I'm not here. But --

8 MR. SHAPIRO: Well, we would.

9 THE COURT: And even then, you know, if you really
10 need me, I will be available and I can be available by
11 telephone conference, if you really need me at that time.

12 MR. SHAPIRO: I --

13 THE COURT: What I'm saying is, it's incumbent upon
14 the debtor and, I think, to the debtor's advantage to provide
15 as much as possible. Because when we come back here, if it's
16 still disputed, I'm going to be looking at that. And if the
17 other side says, well, Judge, if we had this, it would -- you
18 know, it might be different. I want to know what the
19 difference is. And then Mr. Felger is in a better position to
20 say why this is a better deal for the debtor.

21 MR. SHAPIRO: A bird in the hand is better, I
22 understand. Again, I'm -- I don't mean to harp on it. I'm
23 still trying to make sure we don't have to come back to you
24 and bother you. I'm assuming professionals can get through
25 the confidentiality agreement, if that's what you're requiring

1 that I do. That's not the issue. Once the Committee gets and
2 HIG gets it, if Sun or somebody else is coming in between now
3 and that hearing, are you starting some process?

4 THE COURT: Well, I don't know is what -- is my
5 answer to that.

6 MR. SHAPIRO: But -- but we -- that --

7 THE COURT: Well, then --

8 MR. SHAPIRO: That's what they're asking for.

9 THE COURT: If -- if somebody else comes in, then
10 I'm sure the Committee will say, we want to give this to
11 somebody else. And you'll say yes or no and you'll work it
12 out, or you'll ask me.

13 MR. SHAPIRO: But --

14 THE COURT: And if -- if it's under probably the
15 same terms as this and it involves the similar thing and the
16 same protections can be granted, it may well be that I -- that
17 I will. I -- I mean, I don't want --

18 MR. SHAPIRO: I'm just asking, you're not ruling now
19 that they have that right to do that, is all I'm saying.

20 THE COURT: Well, I'm not -- that wasn't what I was
21 asked to do today, and so I'm not ruling that.

22 MR. SHAPIRO: Thank you. That's -- then we don't
23 have to --

24 THE COURT: But, I mean, I think you can get the
25 gist of where I'm going with it in the general terms. I don't

1 want to see the debtor harmed. I -- that's the last thing
2 that I want to see happen. But, on the other hand, I need to
3 know -- I need to allow the Committee to be able to assert
4 their position adequately on behalf of their constituency, and
5 -- and I believe that that helps Mr. Felger to make his case
6 for the debtor because --

7 MR. SHAPIRO: He has to make it with me, Your Honor.
8 I'm not -- I'm not arguing that point.

9 THE COURT: Well -- but I'm saying that Mr. Felger,
10 if he is going to convince the Court that this is in the best
11 interest of the estate -- that this financing is in the best
12 interest that -- ultimately, that the plan proposed is, he
13 needs to be able to convince the Court that nothing else there
14 is better, this is the best.

15 I mean, yes, the debtor has the right to go forward
16 and the debtor has exclusivity and nobody has terminated it at
17 this time. But that still doesn't mean it's a -- it is a done
18 deal and that the plan will get confirmed that way or the
19 financing will be approved that way, if the Court make --
20 can't make the findings that it needs to, to support that.
21 And supplying information and giving the Committee the
22 opportunity in a very short period of time -- I mean, I -- you
23 know, it's unfortunate, to me, that the Committee couldn't get
24 set up further. I'm not, you know -- I mean, but it didn't
25 happen until April 1st.

1 MR. SHAPIRO: That wasn't our --

2 THE COURT: I know, but I'm just saying, that's --

3 MR. SHAPIRO: Okay. Or they're fault either, that's
4 correct.

5 THE COURT: -- that's -- right, that's where we are
6 today. They have limited time. They're spending a lot of
7 their time and effort for maybe little compensation. As
8 things stand in their mind, they don't know whether they're
9 going to be compensated fully by what money will be available.
10 I -- I'm confident they don't want to see the debtor close up.
11 But if that ends up being what the position the Committee
12 takes, I don't -- you know, that that's as good as what there
13 is, they can take the position.

14 All I'm saying for today's hearing is, they have
15 asked to make these documents available for the potential
16 offer that -- that has been put on the table, and I think
17 they're entitled to get that.

18 MR. SHAPIRO: For HIG?

19 THE COURT: For HIG. If somebody else comes down
20 the pike, I'm sure that, you know, Mr. Sirota or Mr. Halperin
21 will be in touch with Mr. Felger and yourself with regard to
22 that. And if you think that the terms are similar and that
23 you think that I would probably approve it, you can agree to
24 that, and that's fine. And if you don't, I will be bothered
25 and I will --

1 MR. SHAPIRO: Then we'll come back.

2 THE COURT: -- jump in and do what I have to do.
3 I'm always available by a telephone conference. I never want
4 attorneys to have to travel more than they have to, to come --
5 I mean, in a way, I'm glad that we actually are having this
6 hearing, even though --

7 MR. SHAPIRO: There's no hearing, understood.

8 THE COURT: -- I think everybody wants to have an
9 adjournment ultimately, because in this expedited process, the
10 Court needs to know what's going on as well as everybody else.
11 And I was -- and even though I don't want to drag everybody in
12 here for more times than is necessary, when it came to my
13 attention that there was a request for an adjournment that was
14 going to be forthcoming, I still wanted to have something go
15 forward so that the Court knows where they are. I don't want
16 to be in a position where we finally come to hearing date,
17 everybody shows up and I'm not sure what's on.

18 MR. SHAPIRO: Understood.

19 THE COURT: So I've heard what you have to say. I
20 understand what you have to say, and I understand your
21 client's position. But, ultimately, I believe the debtor has
22 a responsibility to provide information that's being -- has
23 been requested by the Committee.

24 MR. SHAPIRO: I understood. Thank you, Your Honor.

25 THE COURT: And if you need an order to that effect,

1 you can submit that, Mr. Sirota and Mr. Halperin.

2 MR. HALPERIN: I don't think an order will be
3 necessary. We'll work out something with a confidentiality,
4 unless --

5 SPEAKER: Your Honor, if you can just so order the
6 record, that's fine.

7 THE COURT: So order the record.

8 SPEAKER: Thank you.

9 SPEAKER: Thank you, Your Honor.

10 MR. FELGER: I guess it's -- that's all we have on
11 the agenda. I guess it's time to address a new date before
12 Your Honor.

13 THE COURT: All right. Well, I also want to go over
14 a little bit with the objections to the disclosure statement.
15 But since we're -- but I'm not opposed to adjourning because I
16 think the Committee needs more time. You need to supply
17 information. I'd urge you to get that as quickly as possible,
18 Mr. Felger.

19 Because, again, if you want to take the position
20 -- if the debtor's position is at the end of, you know, this
21 process or whatever, that this is the best deal and this works
22 best and it should be approved, this is the best financing for
23 the reasons that you've set forth before and whatever else you
24 want to present, you're more than welcome to bring that.

25 But I want to be certain that when that comes on,

1 that the parties have an opportunity to address all the issues
2 before the Court so they can all be met.

3 Mr. Brody?

4 MR. BRODY: Your Honor, if I could just interject
5 with a suggestion. So that we don't delay anymore with
6 respect to the documents, as we've said it before, it was our
7 belief -- it was HIG's belief that we were already under a --
8 a confidentiality agreement that was a three-year
9 confidentiality agreement, starting from July 12, 2007.

10 I would suggest that either, one, we continue with
11 this confidentiality agreement and the Court finds that this
12 applies to the debtor in possession, as well as the pre-
13 petition debtor in some way just move things along.

14 THE COURT: Well, let me do this with regard to
15 that.

16 MR. FELGER: I haven't seen it, Your Honor. But I
17 -- I can't comment on that. I haven't even seen it.

18 SPEAKER: Nor -- nor have I, Your Honor.

19 THE COURT: Okay.

20 SPEAKER: I have copies.

21 THE COURT: Well, what -- what I was going to say
22 is, when we finish here today, I'll give you the opportunity
23 to discuss it. You can look it over. You can -- if the
24 parties agree that that confidentiality will continue and they
25 want that to be approved by the Court and everybody is in

1 agreement, I don't have a problem with that. If, instead, the
2 debtor wants a new confidentiality agreement, that's fine,
3 too. Just get it done quickly, get it finalized, so that the
4 documents can be provided, hopefully, within the next day or
5 so. I mean, that's what I'm hoping for.

6 MR. BRODY: Your Honor, and that's exactly, exactly
7 my -- my concern. What we've heard today is Arch arguing the
8 debtor's points. And I was fearful that the delay in getting
9 a confidentiality agreement from the debtors because we
10 haven't had responses from anything from them. And then to
11 get the documents --

12 THE COURT: Well, let me -- let's pick a hearing
13 date that we're going to come back. Then we'll back
14 everything up with when everything has to be provided.

15 MR. BRODY: Thank you, Your Honor.

16 MR. FELGER: Your Honor, can I just -- can I just
17 clarify the record. We've had a conference call with HIG.
18 I've had a number of telephone conversations with Mr. Brody.
19 We've had email exchanges. I -- I don't want the Court to --
20 to have the mis -- misconception, misperception that we
21 haven't spoken with them. I've had a number of conversations
22 with Mr. -- Mr. Brody.

23 MR. BRODY: Well, I'm not saying we hadn't spoke.
24 I'm sorry, Mr. Felger, if I -- I meant it that way. Of course
25 we spoke because we never received any comments to any of our

1 documents or our document requests.

2 THE COURT: All right. Let's get past that for
3 today. I'm not taking testimony on anybody. I'm confident,
4 my knowledge of the attorneys who appear before me and I --
5 I'm assuming the others that are appearing here for the first
6 time, that this can be worked out and it can be worked
7 expeditiously. So what time frame are we looking at?

8 Mr. Sirota, what do you think the Committee would
9 look for?

10 MR. SIROTA: Judge, I -- I think the problem, as we
11 were comparing calendars yesterday, is that Your Honor wasn't
12 available next Wednesday. Mr. Felger wasn't available
13 Thursday. I wasn't available Friday. And I knew it would
14 then take us --

15 THE COURT: Well, I am -- I'm available next
16 Wednesday, not the Wednesday after. Next Wednesday the 23rd,
17 right?

18 SPEAKER: Yes.

19 THE COURT: I am available on next Wednesday.

20 MR. SIROTA: Unless that's too soon for the parties
21 with depositions, then I think the next day would be May 1st,
22 which would be the Thursday after Your Honor returns from --

23 THE COURT: The problem with that is that -- that's
24 really going to be difficult for me because, number one, I
25 won't have been here for three days and the next day is the

1 Bench Bar Conference. Even if I were to miss the Bench Bar
2 Conference, which, if it was important enough, I would, it's
3 really going to be difficult for me to do that on the 1st. I
4 would prefer to do it, if either the end of next week or the
5 week after that. So --

6 MR. FELGER: Well, I -- I have -- my problem is, I
7 have a mediation. I'm the mediator of a matter involving a
8 lot of people next Thursday. I can move it and I would be
9 prepared to move it if -- if we need to, although, it will
10 upset a lot of people.

11 THE COURT: Well, you know --

12 MR. FELGER: And I -- and I think Mr. Patterson --
13 I'm recalling everybody who will need to be there. I believe
14 Mr. Patterson has a problem next Thursday, as well. And I
15 believe Mr. Sirota had issues on Friday.

16 MR. SIROTA: That -- yes, late --

17 THE COURT: Friday the 25th?

18 MR. SIROTA: Late Thursday and Friday.

19 THE COURT: Well, I -- I do have the 23rd.
20 Actually, I -- I moved something else. I had something else,
21 but I'm going to move that around to the -- or earlier or
22 whatever, so that I could have the 23rd available. And I
23 guess after the 23rd, it would have to be the week of May 5th.

24 MR. SIROTA: Judge, I -- I think that if we -- if we
25 said it was next Wednesday, we would all work like dogs, but

1 at the end of the day, we wouldn't get enough accomplish with
2 deposition and documents, Passover.

3 THE COURT: All right. Well, that's what I'm
4 thinking. I -- you know, I -- I'm concerned about the
5 debtor's continued operation, which we really haven't had a
6 lot of time to go on that, so I want to do this as quickly as
7 possible, I'm just not sure --

8 SPEAKER: Is Your Honor available Monday, May 5th,
9 or is that a motion?

10 THE COURT: Well, it's a motion day.

11 MR. SIROTA: We have -- I think we have hearings
12 that day.

13 THE COURT: We have that week.

14 SPEAKER: The following Friday is -- is the Bench
15 Bar Conference.

16 (Discussion amongst counsel about upcoming schedule.
17 Unable to determine who the speakers are, they are speaking
18 over one another.)

19 MR. BRODY: I'm sorry, Judge, May -- does May 5th
20 work?

21 THE COURT: I have motions that day. It's my first
22 motion day after I've been away, so -- I don't have motions
23 the next -- the week of the 28th, so it makes that a very
24 tough day. I mean, I have the afternoon available, but I -- I
25 don't think we're going to be able -- assuming we're as

1 contested as we are now, I just don't see us finishing in a
2 couple hours. I -- I need a whole day.

3 MR. SIROTA: I think -- I think more.

4 THE COURT: Right. I'm saying, I -- I need a whole
5 day and maybe more, so I -- you know, I -- I'm not
6 participating in the Bench Bar Conference myself. I mean, I
7 would be going, but I'm not participating. I -- I don't know
8 if anybody else is. I don't want to tell --

9 SPEAKER: I'm going to be speaking, Your Honor, and
10 the last thing I want to do is -- is annoy the President of
11 our Bar Association --

12 THE COURT: Okay.

13 SPEAKER: -- or --

14 THE COURT: I'm just saying that, you know, in
15 urgency, I mean, maybe we could start and -- and do some time
16 then. But I -- I -- I'm not -- I don't want to do then. If
17 somebody -- if you're participating, then that doesn't work at
18 all. So, like I said, I had the 23rd. Nobody can do the
19 24th. And the -- and then we've -- we've got the next week.

20 SPEAKER: 6th and 7th, I guess, it sounds like.

21 THE COURT: I have a trial with a pro se debtor that
22 I have rescheduled and I have made a firm date on the 6th. I
23 -- I mean, it's certainly not -- doesn't involve as many
24 people as this case, but I have made this -- I've had to move
25 this a couple times, and I've told the parties that it will

1 not be moved from that date. I have a possibility that I
2 could do the 7th. I have Chapter 13's, but if -- if I can
3 find another courtroom to have those go forward, it's possible
4 that I could have that date.

5 SPEAKER: Mr. Brody was just gracious enough to say
6 that he could have someone fill in for him the day of the
7 Bench Bar.

8 THE COURT: Ms. Vuocolo, I think, would
9 be --

10 SPEAKER: She just got volunteered.

11 SPEAKER: What -- what am I standing on?

12 (Discussion amongst counsel about scheduling.
13 Unable to determine who is speaking, they are speaking over
14 one another.)

15 SPEAKER: What's the topic?

16 MR. BRODY: Interesting enough, it's -- it's whether
17 a sale should be done through a plan or through a 363.

18 THE COURT: So should we invite the Bench Bar here?

19 SPEAKER: We could have it here, Your Honor.

20 MR. D'AURIA: Your Honor, being the lowest ranking
21 member in the room, I -- I hesitate to mention my
22 participation at the Bench Bar. I'll be here.

23 THE COURT: All right.

24 MR. D'AURIA: Judge Kaplan will not be unhappy with
25 me, but I'll deal with that.

1 THE COURT: Well, we wouldn't want to do that, Mr.
2 D'Auria. I -- I don't think the Bench Bar date is going to
3 work. I don't think the 2nd is going to work.

4 SPEAKER: Thank you, Your Honor.

5 THE COURT: I get -- I mean, I could -- we could do
6 this on the 1st. I'm -- I'm just telling you that it will be
7 difficult to -- to get everything. I -- I mean, I probably
8 will not be able to give you my decision immediately. That's
9 the only -- I guess it's the only day that I can find left is
10 the 1st.

11 MR. SIROTA: That would be wonderful. Even if we
12 had to wait for a decision, Judge, at least we'd get the
13 show --

14 THE COURT: Because I -- you know, I'm sure that
15 you're going to be filing things between now and then, and I'm
16 not going to be here for a couple -- I mean, I do have a -- I
17 mean, I have access on my BlackBerry but I don't -- the size
18 of these documents will probably not fit on there.

19 MR. SIROTA: One of the conditions was that we set a
20 time frame so that we're not getting submissions at 8:30 in
21 the morning before --

22 THE COURT: All right. Perhaps that would be the
23 way to do it. Because that's the only day I -- I think is
24 available. I really don't want to do that, but I'm going to
25 be forced to do that. I -- I just don't see any other day

1 that we have. And it is a day that I don't have anything
2 else, and it's the only -- and I don't have any other court
3 because I knew I was coming back and I would have things to
4 do, so this is going to be it.

5 What I'll say is, we're going to have to set the
6 deadline for filing before the -- before that week for
7 everything that we do. So let's -- let's put it down for May
8 1st. Let's backtrack.

9 MR. FELGER: 10:00, Your Honor?

10 THE COURT: 10:00.

11 Let's backtrack back to the confidentiality
12 agreement and the documents. I'm going to -- I'm going to
13 order that either the parties work out an extension of what
14 was entered into before -- and, obviously, it has to be
15 reviewed and -- and everything. Or -- or prepare a new one
16 and get that into place by tomorrow. You can do it this
17 afternoon or tomorrow. And that would then -- and in the
18 meantime, the debtor could start assembling the documents.

19 Is there any reason why you couldn't provide those
20 by Monday?

21 MR. FELGER: I -- I don't think so. I mean, there
22 are -- there are requests for customer information and we'll
23 need to talk about that, but --

24 THE COURT: I think Mr. Brody said that wasn't
25 crucial for right --

1 MR. BRODY: Your Honor, if I can make a suggestion.

2 We have taken from the list, which is about a page-and-a-
3 quarter and we parceled it out to the DIP, the DIP of the five
4 issue things that I asked for. I think by Monday, we should
5 have the information we asked for for the DIP and the rest of
6 it prior to the hearing coming up. But, I think there's no
7 reason why the limited things that we've asked for, including
8 the ability to talk to the CIT and the borrowing base
9 certificate, which is -- and the new budget basically --

10 MR. FELGER: That -- that's not a problem.

11 THE COURT: Those will be -- those should be
12 provided by Monday. Let's say the balance of the documents --
13 and -- and you can work those out. I will be here next week,
14 so if you need my input, you know, we could try to have a
15 phone conference or something if you can't work it out. Let's
16 say by Thursday the 24th. It still gives us Friday if we need
17 to do something afterwards or we need extension or whatever
18 else. And any pleadings I also need to be filed by the 24th,
19 so at least I can get those and have those before I go away.

20 MR. SHAPIRO: And concluding the amended -- excuse
21 me, the amended plan and disclosure statement?

22 THE COURT: If you want to -- if you can do that by
23 that time, that would be fine. But anything -- I know the
24 Committee wants to provide additional objections to the -- the
25 financing.

1 MR. SIROTA: Judge, we -- we -- initially, when we
2 were talking about a Wednesday hearing, I think the
3 anticipation was that the amended plan and disclosure
4 statement would be filed today. The reason I raise that is,
5 there's going to be documents produced by the debtor and Versa
6 to us and depositions taken. And that give us --

7 THE COURT: When are they scheduled, the deps?

8 MR. SIROTA: Well, we're -- we're about to work that
9 through, but I --

10 MR. SHAPIRO: We're going -- right, so I -- I wanted
11 to wait till after that was done. No sense amending something
12 or have him file an objection, asking for another amendment
13 until --

14 THE COURT: I just need you to do that before I go
15 away. Because I want to see them before I go, so I can take
16 everything with me and --

17 MR. SIROTA: I would ask that those pleadings be
18 filed, since one pleading has already been filed, by Monday
19 the 21st; their documents be produced by the 22nd. We'll then
20 schedule depositions 23, 24, 25 or, if need be, 28 and 29.
21 We'll work that out. But we were on a much faster track --

22 MR. SHAPIRO: I don't -- I don't agree to fix what
23 Your Honor hasn't given me a list yet. The 13 objections and
24 the objections of all the Committee by Monday, when we have a
25 May hearing on a disclosure statement.

1 MR. SIROTA: Well, until -- until today, last night,
2 we were told that the amended plan and disclosure statements
3 would be submitted to day.

4 MR. SHAPIRO: I -- I never said I would submit it.

5 MR. SIROTA: I was actually talking to the debtor
6 about it.

7 MR. SHAPIRO: Yes, well, I was drafting it so --
8 okay.

9 MR. SIROTA: Right, until we saw 12 objections and
10 realized we had to adjourn here.

11 MR. SHAPIRO: Until we saw 12 objections and we
12 stopped.

13 THE COURT: All right. Well, let's -- let's --

14 MR. SHAPIRO: Okay. Sorry.

15 THE COURT: Have you had an opportunity to look over
16 the objections?

17 MR. SHAPIRO: No.

18 THE COURT: No?

19 MR. SHAPIRO: No. We were preparing --

20 MR. FELGER: I -- I have not -- I certainly have not
21 perused them. I flipped them.

22 THE COURT: How about the ones -- I mean, there's a
23 -- there's a bunch of them, I'm going to say, that involve
24 environmental issues. You haven't looked at those, really,
25 and --

1 MR. SHAPIRO: No.

2 THE COURT: -- and analyzed whether those -- well,
3 let me ask you, when do you think you can have the -- the
4 amended disclosure statement and plan finished?

5 MR. SHAPIRO: When are the depositions being taken,
6 next week?

7 THE COURT: Well, you're going to work that out.

8 MR. SHAPIRO: Okay. I apologize, Your Honor. Do
9 you want to give me your list? I didn't -- you said you had a
10 list of disclosure statement --

11 THE COURT: I will -- I will --

12 MR. SHAPIRO: Okay.

13 THE COURT: I will give you that.

14 MR. SHAPIRO: I understand. So --

15 THE COURT: Some of mine are -- are the same as some
16 of the others.

17 MR. SHAPIRO: Understood. I'd like till Friday the
18 -- April 25th.

19 MR. SIROTA: For the disclosure statement hearing
20 then to be on the 1st?

21 THE COURT: Yes.

22 MR. SIROTA: I think it should be before, Judge.

23 THE COURT: Well, I'm going to say the 24th anyway,
24 because I need to have it. And if it comes in at the end of
25 the day on the 25th -- and then I would ask --

1 MR. FELGER: The 24th is fine, Your Honor.

2 THE COURT: -- the 24th. And I would ask that you
3 deliver a hard copy version to chambers, because, you know, I
4 -- I just -- I want to be able to get my hands on it, take it
5 with me, and --

6 MR. SHAPIRO: Understood.

7 THE COURT: You can electronically file it, but I --
8 I need to get --

9 MR. SHAPIRO: We mail the copy. Okay.

10 THE COURT: And you can come anytime towards the end
11 of the day, because I -- we can get it actually -- even if you
12 have to deliver it after hours, I'm not concerned about that.
13 I won't look at until the -- until the 25th. But I need it to
14 be available by then. And then if there's an issue, I'm still
15 here on the 25th if the parties need me for anything.

16 MR. SIROTA: What about the production of documents,
17 which are needed pre-depositions?

18 THE COURT: Which ones are those?

19 MR. SIROTA: The documents? This --

20 THE COURT: Well, are these the five things that Mr.
21 Brody asked for or other things?

22 MR. SIROTA: These are -- these are the subpoenas
23 and the documents that Mr. Felger referred to that --

24 THE COURT: That he was getting ready and he --

25 SPEAKER: For him, correct.

1 SPEAKER: That's right.

2 THE COURT: -- had just about ready? Was that --
3 are those -- is that what I'm talking about -- we're talking
4 about? You said that --

5 MR. FELGER: Yeah, there's a rule of 2004, a
6 subpoena issued by the Committee.

7 THE COURT: Right. And you said that there were
8 many areas and you were trying to work them out with Mr.
9 Sirota, but most of it was things that you were going to be
10 able to do, right?

11 MR. FLEGER: Yeah, we've given a lot of it to them.
12 I'll -- I'll get on the phone with Ms. Vuocolo this afternoon
13 and we can go through it again and --

14 THE COURT: Well, let's see that by Monday you
15 provide all that. Because they do need that information for
16 their depositions. You know, I realize this is burdensome for
17 everybody, but if you need this to be done quickly, it just
18 has to be the way it is.

19 MR. SIROTA: And then we will schedule the
20 depositions -- we'll work with the parties -- probably that
21 week, if not, no later than the Monday after.

22 MR. SHAPIRO: I'm sorry, are we talking about the
23 week of the 21st?

24 MR. SIROTA: Yes.

25 MR. SHAPIRO: Okay. Okay. And that would include

1 HIG as well, Your Honor.

2 THE COURT: Include them as far as what?

3 MR. SHAPIRO: Depositions.

4 THE COURT: Okay. Whatever the parties think --

5 MR. SHAPIRO: And we'll -- we'll talk about that.

6 They're all to be completed during that time period.

7 MR. BRODY: Your Honor, I don't know why the DIP
8 lender needs to take the deposition, but we'll talk about
9 that.

10 THE COURT: Well, work it out, or let me know what
11 -- what the problem is.

12 MR. BRODY: Your Honor, one last date. The -- we
13 have prepared a motion to terminate exclusivity on short
14 notice. We'd like to have the return date on May 1st. We can
15 have it filed by the end of business today. Mr. Shapiro
16 believes, on behalf of himself and apparently the debtor as
17 well, that the process of exclusivity is so important and it
18 should never be broken unless pursuant to the bankruptcy code.
19 Therefore, Your Honor, we would like to put before you a
20 motion to terminate exclusivity.

21 MR. SHAPIRO: I'm sorry, Your Honor, HIG is doing
22 that? They are what again? I competitive --

23 MR. BRODY: Your Honor, we are also a creditor.

24 MS. SHAPIRO: And they bought a claim.

25 MR. BRODY: And Mr. Shapiro is aware of that.

1 THE COURT: You know what, file it, I'll look at it.

2 I think it --

3 MR. BRODY: Thank you.

4 THE COURT: You know, if I think your paper is
5 warranted to be and I will consider it, it may be a good thing
6 to get this out at the time that we're here and -- and deal
7 with the issue.

8 MR. BRODY: Thank you, Your Honor.

9 THE COURT: Because that would kind of hone on that
10 issue that you brought up, Mr. Shapiro. If the Court denies
11 that, then the issue of the exclusivity continues. I mean,
12 you know, it's -- it's unusual to -- to terminate exclusivity
13 so soon, so I -- I'll need to see what they say about. I -- I
14 wouldn't --

15 MR. SHAPIRO: As long as there's --

16 THE COURT: I'll be honest with you, Mr. Brody, even
17 if I -- if I reduce it to the -- to the 1st, I don't know that
18 I'll be able to decide it on the 1st. I might hear it on the
19 1st, but I'm not going to have a lot of time to go over this
20 with my law clerk and get -- and get it ready for the 1st.

21 MR. BRODY: Your Honor, we understand --

22 THE COURT: But I'm -- I'm just -- I want the
23 parties to understand, I will do my best to be prepared for
24 whatever we have to do on the 1st, but it's -- if things
25 change and they come in late and there's a lot of other

1 issues, they may be taken under advisement because I'm just
2 not going to be able to handle it.

3 MR. BRODY: Your Honor, all we're trying to do is
4 create an open and competitive process.

5 THE COURT: I understand. But what I'm saying is --

6 MR. BRODY: But I understand. Thank you.

7 THE COURT: -- if you make your application and I
8 grant it and I put it on for the 1st, I may consider it, but
9 I'll take it up at the time as to whether I can actually
10 decide it at that time or whether it's appropriate. You know,
11 all of those issues will still be open.

12 Mr. Sirota?

13 MR. SIROTA: Judge, when should parties submit a
14 disclosure of witnesses and documents they plan to introduce
15 at the hearing?

16 THE COURT: When do you feel you could do that?

17 MR. SIROTA: We're -- we're at a little bit of a
18 disadvantage because our depositions --

19 THE COURT: I mean, personally, I don't care, you
20 can do that on the 30th, as far as I'm concerned, because
21 other than trying to -- I mean, you know, we may not be able
22 to finish on the 1st, I don't know. But --

23 MR. SIROTA: I would just ask one thing, Judge.
24 That should be okay with a final list, but if there are
25 surprises -- for example, we know who they've produced during

1 the first day. There should be a disclosure next week,
2 subject to amendment, as to who they intend to call.

3 THE COURT: Do you have an idea, Mr. Felger, what
4 you're planning to present?

5 MR. FELGER: Well, I -- I haven't seen the motion to
6 terminate exclusivity. I mean, that could change --

7 THE COURT: Well, I --

8 MR. FELGER: -- change everything, so --

9 THE COURT: I don't -- let me say this. If I
10 shorten that to that day, I don't plan to do it on testimony.
11 I mean, if I have to have -- take testimony, there's no way I
12 can finish -- I can do that on the 1st, if that's what the
13 issue is. If there's legal issues, I can consider them.
14 So --

15 MR. SHAPIRO: Your Honor, I'm sorry, terminating
16 1121 is for cause, so you're going to have to have facts.

17 THE COURT: Right, I --

18 MR. SHAPIRO: So if you want to add another hearing
19 now, then that's -- we hope not, so we can --

20 THE COURT: I just don't know -- Mr. Brody,
21 honestly, I just don't know that I could -- that I'll have
22 time to do that on the 1st.

23 MR. BRODY: We understand, Your Honor. We're just
24 trying to create the process.

25 THE COURT: I -- I understand that, but I'm probably

1 going to have to put your motion on another day, even if it's
2 after the 1st. You can make your argument, but I -- I don't
3 think the parties can get ready for that and do the, you know,
4 due diligence, if you want to call it that, to be ready for
5 that -- that contested motion with --

6 MR. SHAPIRO: With a discovery statement and a DIP
7 hearing.

8 THE COURT: Right. With the -- with the disclosure
9 statement. And the -- and the financing, which I think will
10 take the bulk of the time that we're there. I mean, I look at
11 the disclosure statement hearing as whether it's adequate.
12 And we're going to get into a little bit of that now, too.

13 But, you know, unless something so overwhelms me in
14 the evidence that I find that it's patently unconfirmable, I'm
15 just going to look at whether it has enough information to get
16 to the next step, which is confirmation of the plan. I know
17 some of the objections had to do with confirmability of the
18 plan, and I don't know if that's going to happen with -- I
19 mean, there's not testimony that's really that necessary with
20 regard to that, but with the post-petition financing and
21 parties' position, I know that's going to take a lengthy
22 period of time.

23 And so in -- in reconsideration, I think it's better
24 if we put your motion on another day. But you certainly can
25 assert that you've made that motion, if -- if that's the way

1 it comes out. Okay?

2 MR. BRODY: Thank you, Your Honor.

3 THE COURT: All right. Back to the -- the question
4 of filing the list of -- we're taking the motion to limit and
5 terminate exclusivity out, Mr. Felger. So when can you have
6 your list of witnesses on the two -- well, on the one issue?
7 Really, adequacy of disclosure statement, I don't really feel
8 that that's going to require a witness list. But, I do --
9 but, the approval of post-petition findings, do you know
10 already who you'll be calling for that?

11 MR. FELGER: I suspect we can give that list --

12 THE COURT: Well, let's say this, the parties will
13 exchange their lists, as they anticipated, on Monday the 21st,
14 and may be supplemented up until Friday the 25th, if
15 necessary.

16 MR. FELGER: That -- that's fine.

17 THE COURT: If something happens in one of the
18 depositions or in some of the information --

19 SPEAKER: Thank you, Judge.

20 THE COURT: -- you can add a witness, if you think
21 it's necessary. I mean, I only have so much time on the 1st.
22 I'd ask you to try to be --

23 SPEAKER: Kind.

24 THE COURT: -- as cognizant as you can of that. I
25 mean, if you want me to try to finish this on the 1st. So I

1 mean, if it's -- there's 20 witnesses, it's just not going to
2 happen. So -- but if something comes up that really, you
3 know, says to the Committee or the debtor or Arch or HIG that
4 there's something else that's needed, and if some other
5 witness really needs to be heard, then supplement by the
6 plaintiff.

7 Anything else that -- time-wise that we need to do?
8 You're going to have to set up your own discovery -- your own
9 deposition schedule.

10 All right. Let's spend a few minutes, Mr. Felger,
11 just going over the objections that have been filed to the
12 disclosure statement. And let me just indicate a few of the
13 issues that I noted myself that have been either brought up by
14 other parties or I felt are something that you need to -- to
15 address. And I would -- will say that I did see the
16 supplement to the plan, and I really didn't have enough time
17 to really analyze it. I tried to have my law clerk look at
18 how some of the documents may have changed.

19 Let me ask you a -- a substantive question here. In
20 reviewing the financing agreement that Arch presented as part
21 of the supplement, I didn't see as part of the secure --
22 security interest that -- a security incident in avoidance
23 actions. Is that a change from the original, or did I miss
24 that?

25 MR. FELGER: In the -- in the exit? You mean the

1 exit commitment?

2 THE COURT: The -- the financing -- yes, the
3 commitment --

4 MR. FELGER: Yeah, there were --

5 MR. SHAPIRO: The commitment is for exit.

6 MR. FELGER: Right.

7 MR. SHAPIRO: So at that point --

8 THE COURT: Okay.

9 MR. SHAPIRO: -- we're not -- there would be no
10 liens --

11 THE COURT: You haven't changed your position,
12 that's only as to exit. Okay.

13 MR. SHAPIRO: Correct.

14 MR. FELGER: Right exactly.

15 THE COURT: There were -- were a number of
16 objections that dealt with the debtor's requirements to meet
17 the absolute priority rule in the event that 1129(b) comes
18 into play, and I -- I'm not sure if you addressed that
19 sufficiently, but I think you should keep that in mind to
20 address that if it isn't.

21 There was also a provision in the disclosure
22 statement and plan that provide for the extinguishment of the
23 inner company claims, and I don't think that you adequately
24 described the inner company claim and indicated why it's
25 advantageous to extinguish those claims, and if there -- and

1 if there's reason or not reason to kind of merge those claims
2 together, which is, essentially, what the debtor is doing.
3 Are there -- are the claims of one entity significantly
4 greater than others? Are they all the same? Do they have the
5 same creditor -- creditor claimants, any of those things. I
6 think somebody referred to it -- one of the objections
7 referred to it as kind of a substantive consolidation without
8 explanation.

9 MR. FELGER: Yeah, we're -- we're not substantively
10 consolidating the entities.

11 THE COURT: Well -- but -- but I think that you need
12 to --

13 MR. FELGER: But I -- I understand your point.

14 THE COURT: -- specifically address, as far as
15 disclosure, as to why that -- that is an appropriate procedure
16 and information as to what those claims are and -- and why
17 they're addressed the way they are.

18 MR. FELGER: Okay. Understood.

19 THE COURT: Class 8 I'm going to call environmental
20 class. It involves the DEP and EPA. I didn't find any
21 detailed explanation about, number one, what the basis of the
22 environmental liability of the debtors is; why the amount
23 that's being proposed is appropriate to deal with that. Does
24 that pay it in full? Does it pay it in part? Does the debtor
25 have any continuing liability? Will those regulatory

1 authorities have any ability to proceed in the future and what
2 their claims are. And what about the other parties that have
3 filed a slue of objections that I assume are related to those
4 environmental issues, but I can't tell because I don't think
5 the debtor has disclosed enough about those.

6 Okay. What is the interest of Crown Credit? They
7 are -- they're a class --

8 MR. FELGER: Purchase money security interest
9 holder.

10 THE COURT: For certain particular equipment?

11 MR. FELGER: Yes.

12 THE COURT: All right. Again, I shouldn't have to
13 ask you that question because it should be explained as to
14 what -- what that entity is. Each class should -- should be
15 clear -- that was one that I didn't really know what they
16 were. You need to explain the claim -- each claim class and
17 -- and what it encompasses. I noted on the docket, there was
18 one notice of reclamation filed, and I didn't see anything in
19 the plan that dealt with reclamation claims, if there are any,
20 if they're valid, how the debtor will deal with them, if --
21 and so on.

22 So I think you need to deal with that. I also
23 didn't see any list -- there's a section that deals with
24 disputed claims but nothing that designates which claims are
25 disputed and the amounts of those claims and --

1 MR. FELGER: Yeah, we have that issue under the
2 local rule because we're --

3 THE COURT: Right.

4 MR. FELGER: -- proceeding in -- in advance of the
5 Bar date.

6 THE COURT: Well, I understand that, but -- but
7 here's the reason for that local rule, so I can explain why --
8 why we Judges felt that that was important. It's hard for
9 somebody to vote if they don't know if they're claim is
10 disputed or not. You know, a creditor may have a million
11 dollar claim and say, okay, I'm -- I'm happy with 10 percent
12 or 2 percent or whatever it is. But if they don't know what
13 they're claim is, then there's no way they can -- they can
14 make an adequate determination of whether their claim is
15 potentially substantially less than it was.

16 So I think that the debtor, even though all the
17 claims haven't been filed, since you've got the debtor's list
18 of claims, needs to at least give their best estimate of -- of
19 what the claims are, of what the validity is, and of the -- of
20 the basis for objecting to claims that they believe are
21 disputed. Since you may not know what they are, you can make
22 it, I guess, an estimate. We expect the claim to be X, even
23 though they haven't filed a claim yet. This is how we
24 scheduled them, and since they haven't disputed that, we're
25 going to go by what we believe it is, but it's disputed

1 because or it's disputed in this amount, so that that creditor
2 at least has notice that their claim is going to be disputed,
3 and they can take that into consideration when they make a
4 determination of how to vote on the plan.

5 I know there's -- there's a lot of issues which I
6 noted down about the releases. I'm not sure it needs more
7 disclosure. I guess maybe perhaps why the debtor believes
8 that this negative notice -- which is the way I'm going to
9 call it -- is in the best way to deal with the current case
10 law dealing with, without making a legal conclusion, but just
11 factually why you believe that this, I guess, meets what the
12 debtor needs to show, and this is a fair way to proceed to --
13 to get to that point.

14 And -- and I think you could use a little more
15 disclosure with regard to the -- what you referred to as the
16 optional release provisions as to why you think that the
17 amount that's being offered there is sufficient consideration
18 for what's being asked the creditors to do with that, which
19 is, essentially, a consent to the releases to share \$100,000,
20 if I understand correctly. And --

21 MR. FELGER: That's correct.

22 THE COURT: -- you know, in my rough calculation, a
23 million dollar claim would get like one cent. So, you know, I
24 -- you need to address why that -- why that's a good -- you
25 know, why creditors should believe that that's appropriate.

1 MR. FELGER: Understood, Your Honor.

2 THE COURT: I'm not going to get into all the -- the
3 issues, but I think when you're asking in the release section
4 in the exculpation, again, why the debtor believes that this
5 is in the -- in the benefit of the creditors, and they should
6 vote for it. If the answer is, this is the only way it works,
7 well, maybe that's the answer.

8 But I think that that's -- that needs to be -- we're
9 talking about adequacy here. We're talking about disclosure
10 and information for creditors to make an informed decision. I
11 think you need to explain why the debtor believes this is
12 appropriate.

13 MR. FELGER: Right.

14 THE COURT: You filed the late -- you filed that
15 late supplement, which addresses some of the issues. I didn't
16 really have time to go over all of it. I think some of that
17 maybe should be part of the disclosure statement and not just
18 part of the plan. So in your -- when you're going over this --
19 - for example, liquidation analysis, that should be part of
20 disclosure, not just a supplement to the plan. And, although
21 you refer to it, I mean, a creditor should be able to hold
22 that disclosure statement as well as the plan --

23 MR. FELGER: Right.

24 THE COURT: -- and know exactly what the debtor is
25 offering, what's being asked and -- and be adequate in order

1 to make a determination based on that. So I'd like you to
2 look that over and see if some of that documentation doesn't
3 belong in the disclosure statement.

4 MR. FELGER: So what we -- what we would do is we'd
5 attach the plan as an exhibit to the disclosure statement and
6 the liquidation analysis would be --

7 THE COURT: Okay. And refer to --

8 MR. FELGER: -- an exhibit to the -- and exhibit to
9 the exhibit.

10 THE COURT: -- that exhibit in your -- in your plan
11 -- in your disclosure statement. That would be fine, as long
12 as -- as long as it's easy to -- to put -- the creditor to put
13 their hands on it.

14 MR. FELGER: Certainly.

15 THE COURT: Collective bargaining agreements. I
16 really didn't see much disclosure about that at all, and I
17 have concern about their -- I didn't hear anybody respond
18 today that they're here representing any of the unions. I
19 know there's a lot of nonunion employees, but there's also
20 union employees. It's kind of a vague assertion that we're
21 going to try to work this out, and if not, we're going to
22 reject.

23 Well, if you need to reject, can you meet the
24 standards that the codes requires in order to reject and why
25 you think that that's appropriate, and what the debtor's

1 position in a lot more detail that's there. I think that
2 those creditors definitely need and require detailed
3 explanation so they can make a determination of whether they
4 can vote on this plan, whether they oppose the plan, and --
5 and how it affects them and the members of their -- their
6 union.

7 MR. FELGER: We'll do that. The -- the parties are
8 in negotiations, Your Honor.

9 THE COURT: Well -- and if you're not at the point
10 where you've resolved your negotiations, I think you at least
11 have to give more of a disclosure than you have as to how
12 you're going to implement that. And you -- it can be
13 alternatively. We're going to work this out by -- I mean, I
14 don't know what the debtor's -- I can't tell from it what the
15 debtor's position is.

16 Does the debtor think they're going to keep these
17 collective bargaining agreements? Are they going to modify
18 these collective bargaining agreements? Are they going to
19 reject them? And if they do one of those three things, how
20 does that affect that union, that -- that agreement and
21 whether it meets the code provisions. I found it was -- your
22 disclosure statement was very lacking in that area.

23 Although this is part of the -- the avoidance action
24 lien that you're proposing to give to the creditor as part of
25 the -- the post-petition financing, I guess maybe by the time

1 they vote on the plan -- on the plan, that might be a done
2 deal, I don't know. But I think that the fact that these
3 avoidance actions that would belong to the estate by virtue of
4 the filing of the bankruptcy that had been pledged by the
5 debtor to Arch's part of the financing, I think that needs to
6 be disclosed to the creditors that that's not going to be
7 there if the post-petition financing, as has been proposed, is
8 approved. And the plan provides that they would not have this
9 asset.

10 Anybody that wants to add to what I mentioned?

11 MR. SIROTA: Judge, I would just ask on your last
12 point that it be accompanied with some sort of economic
13 statement. Do they know what the potential preferences are in
14 avoidances actions, and creditors should know that --

15 THE COURT: To the best that the debtor can -- can
16 ascertain what they think that is.

17 MR. SIROTA: But I think, most importantly, there
18 has to be an explanation that there's been a proposal made
19 that, in fact, a -- a plan --

20 THE COURT: Oh, that was another -- that was -- that
21 was your issue, not mine.

22 MR. SIROTA: -- a plan has been filed and HIG has
23 stepped forward, so creditors can see in black and white what
24 the debtor is suggesting and what the debtor prevented.

25 THE COURT: Right, I -- I agree with Mr. Sirota that

1 that needs to be disclosed. Certainly, the debtor can take
2 the position that it's not as good an offer, that it's better
3 to go with the -- the offer they have for the reasons they
4 think. But that's -- this is disclosure of information that
5 creditors need to make a meaningful determination, Mr.
6 Shapiro. And I think --

7 MR. SHAPIRO: I -- I agree, but -- if you're saying
8 that if assuming for the moment you're not terminating
9 exclusivity, we're not going to have a solicitation of two
10 plans at the same time. If you're attaching a competing plan
11 and then saying --

12 THE COURT: No, I -- I don't say he --

13 MR. SHAPIRO: Okay.

14 THE COURT: -- has to attached a competing plan. He
15 can just say that the debtor has received this offer to do
16 whatever it is. And I'm not even sure what it is. But -- but
17 the debtor has reviewed it and believes that it is not in the
18 -- is not as good a deal as the deal that's before.

19 MR. SHAPIRO: Okay.

20 THE COURT: I'm asking for -- this is -- the purpose
21 of this is disclosure. If the debtor takes the position that
22 the proposal as it -- as it needs -- as it sees it is there, a
23 creditor then has the ability to then look forward, ask for
24 more information, go to the Committee, come to the debtor, do
25 whatever it needs to do. They need to know it exists. The

1 debtor can take the position this is their disclosure
2 statement and plan and this is not as good, but that is
3 information that I believe that a creditor needs to have in
4 order to make a determination.

5 MR. SIROTA: To avoid, you know, a debate on that
6 issue at the hearing and to minimize debates, I'd be more than
7 glad -- we'd be more than glad if Mr. Felger would send us his
8 draft of what he plans to say, and we'll try to work on
9 something consensual. If we can't resolve it, Your Honor
10 will.

11 MR. FELGER: That's fine.

12 THE COURT: Mr. D'Auria?

13 MR. D'AURIA: Your Honor -- Your Honor inspired a
14 comment -- a thought on the collective bargaining agreements.
15 I learned that the 341, that the different operating different
16 operating debtors have different collective bargaining
17 agreements. I just politely suggest that the debtor be
18 mindful when working through Your Honor's comments in the
19 collective bargaining agreements, keep the different operating
20 debtors in mind when you talk about which agreement.

21 MR. FELGER: We'll do that.

22 THE COURT: I really -- I really feel that for the
23 Court's knowledge, as well as the creditors, you really have
24 to explore a lot more detail about the different entities and
25 their creditor base and how they -- and their inter creditor

1 relationship in order for the Court to be able review and for
2 creditors to make a meaningful determination.

3 Mr. Brody?

4 MR. BRODY: Your Honor, we would also ask in the
5 disclosure statement for the debtor to set forth how much Arch
6 is actually putting up in cash, because buried in the plan's
7 supplement is a limit to the amount of the -- and I may get
8 this one confused -- plan funder's equity contribution, which
9 is the first time a limit comes up. And that is important to
10 how much money is coming in to pay the different classes of
11 creditors. So how much actually is being put up by Arch, I
12 think, should be disclosed.

13 MR. FELGER: Well, we have to satisfy feasibility,
14 so that information needs to be -- needs to be in there.

15 MR. BRODY: Thank you.

16 THE COURT: Anybody else?

17 MS. POLLACK: Good morning, Your Honor. Robyn
18 Pollack again for --

19 THE COURT: Actually, afternoon by now.

20 MS. POLLACK: Oh, we've been here quite a long time.
21 I just wanted to add to your list some disclosure about the
22 insurance, particularly for environmental claimants. That's a
23 big issue --

24 THE COURT: Right, since everybody brought that up,
25 I just assumed that Mr. Felger is going to deal with those.

1 But you're right, yes, the extent of insurance -- to be
2 honest, I don't even know the details. And that was a big
3 concern I had about the environmental issues. And I think
4 that besides whatever is pending -- and I think you have to
5 disclose all that -- anything that's not pending that's an
6 issue environmentally -- I don't really know the essence of
7 the litigation that's pending. Is this a State of Federal
8 mandated cleanup? Is that what this --

9 MS. POLLACK: I mean, there are several pieces of
10 litigation and -- and cleanups that are pending. There's a --
11 a list of them that the debtor has provided on Schedule 4.5.

12 THE COURT: And is your client and some of the
13 others -- they're also defendants in those litigations? Or is
14 that --

15 MS. POLLACK: Yes, we are co-defendants with the
16 debtor on some pieces of litigation. And there is another
17 piece of litigation, the Puchak (phonetic) site, which we are
18 the only defendant. And, in fact, I've been informed by the
19 EPA that the debtor has not even been named. They are still
20 completing their investigation, and I -- you know, we're a
21 little curious as to why it's even listed, because they
22 haven't even been named at all. So we have an issue with that
23 that's separate from the other environmental claimants.

24 THE COURT: What do you mean, why the debtor would
25 list them --

1 MS. POLLACK: I mean, the EPA has informed us that
2 they have filed nothing. They have -- they have not
3 completed --

4 THE COURT: Well, but if the debtor -- if the debtor
5 believes there's a potential -- a potential cause of action
6 against them, whether it comes to fruition or not, they still
7 have an obligation to -- to notify EPA that they -- that they
8 filed, so that they know where that stands.

9 MS. POLLACK: Right, and I understand that. I guess
10 my point is, there is no reason for them believe that the EPA
11 is going to file something against them. That -- that's my
12 point.

13 THE COURT: Well, I'll just ask Mr. Felger to
14 provide disclosure of whatever environmental issues the debtor
15 is involved in, expects to be involved in, is concerned about
16 being involved in, and how that -- and whether there's
17 litigation or claims that have been in any of those cases, as
18 well as how that affects other parties that have filed
19 objections and have not filed objections.

20 Mr. Felger?

21 MR. FELGER: I'm -- I'm sorry.

22 THE COURT: I'm sorry, I said that --

23 MR. FELGER: I apologize.

24 THE COURT: -- the debtor has to disclose all the
25 environmental issues.

1 MR. FELGER: Yes.

2 THE COURT: The suits they're involved in, the
3 claims they anticipate could be filed against them, whatever
4 they know or anticipate or suppose or -- or deny that they're
5 involved in but could be out there, and -- and what they think
6 the -- I guess, liability that that would be to the debtor.

7 MR. FELGER: We understand, Your Honor. And --

8 THE COURT: And -- and, also, disclose other parties
9 that are involved in those, so that, you know, everybody knows
10 those. I mean, we haven't really had a lot to deal with that
11 so far in this court, but it could become a -- an issue.

12 MR. SHAPIRO: With one issue that was replete in
13 each of the environmentals, some of the litigation has been
14 going on for 17 years. They've had discovery requests for the
15 debtor well before this case started. A lot of them are
16 asking for information on the insurance. All I can say is,
17 the debtor will give them the information that they have on
18 the insurance. But some of these legacy policies since this
19 company was formed in '52, we -- you can only disclose what
20 you know, and after that --

21 THE COURT: Well, and that's -- that's what the
22 debtor has to do.

23 MR. SHAPIRO: Okay.

24 THE COURT: The debtor has to disclose what is
25 knows.

1 MR. SHAPIRO: Right.

2 THE COURT: That's what -- that's what I believe
3 that the disclosure system procedure mandates.

4 MS. POLLACK: Right, if there is available
5 insurance, we need to know about it and have the ability to --
6 to go after it.

7 THE COURT: And -- and that's part of the debtor's
8 obligation, to list whatever the policies are that they know
9 of. Okay?

10 MS. POLLACK: Thank you, Your Honor.

11 THE COURT: Anybody else that wants to be heard?

12 MR. KLEIN: Just briefly, Your Honor. The Township
13 of Pennsauken filed an objection to the DIP financing and
14 disclosure statement. The disclosure statement provides for a
15 6 percent interest, which is contrary to the bankruptcy code
16 and the New Jersey statutes which are applicable. I would
17 also like the debtor to address that either prior to the
18 hearing or at the next hearing.

19 THE COURT: Mr. Felger, this is real -- I mean, an
20 explanation of why they think it's appropriate to have the
21 plan the way it is, is that what you're asking?

22 MR. KLEIN: Correct. One of the things that they
23 indicate is they would like to transfer the property free and
24 clear of the Township's liens. They're not going to be paying
25 penalties on outstanding taxes that the pre-petition imposed.

1 And, again, contrary to Section 511 and applicable New Jersey
2 statutes, they indicate it they'll pay 6 percent rather than
3 the mandatory 18 percent --

4 THE COURT: But wouldn't that really be an objection
5 to confirmation?

6 MR. KLEIN: Later on, but I'm just saying, if -- if
7 that could be addressed now --

8 THE COURT: Well, I mean -- well, but it's not
9 really -- that's not an adequacy issue, I mean, for -- they've
10 disclosed already this is what they're going to do. And if
11 you don't think that that's right, then you either need to
12 negotiate it with Mr. Felger --

13 MR. KLEIN: Right.

14 THE COURT: -- or object to confirmation, and then
15 the Court can determine whether that -- that can be part of
16 the confirmation if it's, you know -- but that's -- I don't
17 know that there's anything they need to disclose more than
18 what they've disclosed about that.

19 MR. KLEIN: That's fine, Your Honor. Maybe we can
20 resolve it prior to that.

21 THE COURT: Anybody else?

22 Mr. D'Auria, anything else that the US Trustee wants
23 to add?

24 MR. D'AURIA: Not at this time, Your Honor. But
25 I've been in touch with everybody and I will continue to do so

1 if I have follow-ups.

2 THE COURT: Mr. Drew, is there anything that you
3 want to add?

4 MR. DREW: No, Your Honor.

5 THE COURT: Okay. Anything else, Mr. Felger, that
6 we need to address today?

7 Mr. Brody, is there something else?

8 MR. BRODY: Your Honor, I'm just -- I apologize. I
9 just want to go back to -- to the five items on our immediate
10 list. One of them is not actually a document. We just want
11 to make sure that we get -- immediately go and talk to CIT.
12 Certainly, that should not be an issue with respect to the --

13 THE COURT: Was that a problem with you, Mr. Felger?

14 MR. FELGER: CIT's counsel told me they already
15 spoke, so --

16 MR. BRODY: I haven't spoke to them.

17 THE COURT: I don't know any reason why -- I mean,
18 that's not really something the debtor has control over.

19 MR. BRODY: I just wanted to make sure that -- that
20 it was never an issue, that the debtor could never -- never an
21 issue, Your Honor.

22 THE COURT: The debtor is not opposing that,
23 correct, Mr. Felger?

24 MR. FELGER: They can talk to Mr. Patterson.

25 MR. BRODY: Thank you.

1 THE COURT: Okay. Anything else? All right. If
2 you need me -- you need to put any of this into the form of an
3 order and submit it. If not, we'll go by what's on the
4 record.

5 SPEAKER: So ordered.

6 SPEAKER: I think -- I think we're comfortable with
7 the record.

8 SPEAKER: So order the record, Your Honor.

9 THE COURT: Thank you.

10 SPEAKER: Judge, thank you.

11 SPEAKER: Thank you, Your Honor.

12 * * * * *

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14 C E R T I F I C A T I O N

15 We, Frances Maristch and Brenda Boulden, court
16 approved transcribers, certify that the foregoing is a correct
17 transcript from the official electronic sound recording of the
18 proceedings in the above-entitled matter.

19
20
21 04/21/08
22 DATE

Frances L. Maristch
FRANCES L. MARISTCH

23 Brenda Boulden
24 BRENDA BOULDEN

25 DIANA DOMAN TRANSCRIBING